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PRECEDENTS,

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Drafts of Actual Practice;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

BY

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OF THE INNER TEMPLE, BARRISTER AT LAW.

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MORTGAGES.

PRECEDENTS.

16. UNDER-LEASE *with* TRUST *for* SALE, *as an additional Security for a* DEBT ANTECEDENTLY *secured* by BOND, *and to insure the payment of* RENT *and* PERFORMANCE *of* COVENANTS *of* ORIGINAL LEASE. COVENANTS *by* MORTGAGOR *to pay Rent and* PERFORM *Covenants of original Lease until a Sale; also for Title, and further Assurance, specially adapted to the Case of an Under-lease made saleable.* COVENANTS *by Mortgagee, that Money shall remain on Security for seven Years, Interest, Rents, &c. being paid; by Mortgagor not to redeem for a certain Period. Declaration negativing implied Warranty of Title by Mortgagor as to Purchasers.*

16. UNDER-LEASE WITH TRUST FOR SALE.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—, BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part: (*Recite lease*): AND WHEREAS, by virtue of divers mesne assignments, the said messuages or tenements and premises became vested in the said [*mortgagor*] for all the residue of the said term of —— years, subject to the rents and to the covenants on the lessee's part by and in the said indenture of lease reserved and contained. AND WHEREAS, by a bond under his hand and seal, bearing date the —— day of ——, 18—, the said [*mortgagor*], bound himself and his heirs, unto the said [*mortgagee*] in the penal sum of £——, subject to the condition thereunder written for making void the same bond, if the said [*mortgagor*], his heirs, executors, or administrators, should pay unto the said [*mortgagee*], his

Parties.

Recital of lease and reference to mesne assignments:—

—Of bond from mortgagor to mortgagee.

16. UNDER-LEASE WITH TRUST FOR SALE.

executors, administrators, or assigns, the sum of £——, on the —— day of ——, 18—, and should, half yearly, that is to say, on every —— day of ——, and —— day of ——, until the same sum should be paid, pay unto the said [*mortgagee*], his executors, administrators, or assigns, interest for the same sum at the rate of five pounds for every one hundred pounds by the year, and make such payments clear of all deductions; which bond bears an ad valorem stamp of £—— (*a*). AND WHEREAS the said principal sum of £——, secured as aforesaid, now remains unpaid, but all interest thereon hath been paid and discharged up to and inclusive of the day of the date of these presents, as the said [*mortgagee*] doth hereby acknowledge. AND WHEREAS the said [*mortgagee*] hath called upon and requested the said [*mortgagor*] to give him a further security for his said bond debt, which the said [*mortgagor*] hath agreed to do, though the period appointed for the payment of the principal money according to the condition of the said bond is not yet arrived; and in consideration of such further security, the said [*mortgagee*] hath agreed to extend the period for the payment of the said principal money secured by the said bond in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of ten shillings of lawful money current in Great Britain to the said [*mortgagor*] in hand paid by the said [*mortgagee*], immediately before the execution thereof, (the receipt whereof is hereby acknowledged), He the said [*mortgagor*] *Hath* granted, bargained, sold, and demised, and by these presents *Doth* grant, bargain, sell, and demise (*b*) unto the said

That principal on bond remains unpaid.

Agreement for further security.

Testatum.

Mortgagor demises to mortgagee.

(*a*) As this mortgage is given as an additional security for a debt already secured by a bond subject to the *ad valorem* stamp, no additional *ad valorem* duty becomes payable. See stat. 3 Geo. 4, c. 117, stated *ante*, Vol. 5, p. 532.

As to under-leases with trusts for sale.

(*b*) Although, as already observed, where leaseholds are subjected to trusts for sale, it is more usual to make the assurance by way of assignment than under-lease, yet the latter mode appears to have been adopted in the present instance, to avoid the mortgagee's liability to a very large rent, and some onerous covenants. In such a case, the covenants for title, &c., are required to be rather specially framed. As between the mortgagor and mortgagee, it is reasonable that the mortgagor should covenant to pay the rents, and perform the covenants of the original lease, and he would, it is clear, be bound to do so under the usual ex-

16. UNDERLEASE WITH TRUST FOR SALE.

[*mortgagee*], his executors, administrators, and assigns, ALL AND SINGULAR the messuages or tenements and premises demised by the hereinbefore recited indenture of lease of or about the —— day of ——, in the year ——, or therein expressed so to be, with their respective rights, members and appurtenances; *And* the reversion and reversions, yearly and other rents, issues, and profits, thereof; Together with all deeds and writings relating to the said messuages or tenements and premises, or any of them, now in the custody or power of the said [*mortgagor*], or which he can obtain or procure without suit at law or in equity; TO HAVE AND TO HOLD the messuages or tenements and premises hereby assured, or intended so to be, with their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, during all the residue of the said term of —— years, by the hereinbefore mentioned indenture of lease, of or about the —— day of ——, granted, or intended so to be, save and except the last two days of the said term. AND *it is hereby declared* that the said [*mortgagee*], his executors, administrators, and assigns, shall stand possessed of the premises hereby assured, or intended so to be, *Upon trust* to permit the said [*mortgagor*], his executors, administrators, or assigns, to receive and take the rents and annual produce thereof for his and their own use, until default shall be made in payment of the whole or any part of the interest of the said principal sum of £——, by the space of one calendar month after any one of the respective days or times whereon the same respectively are appointed to be paid in and by the condition of the above recited bond, or until default shall be made in the payment of the said principal sum of £——, at the expiration of seven years from the date hereof, or, (which shall first happen), until the said [*mortgagor*], his executors or administrators shall fail to pay the rent, or to observe or perform the covenants on the lessee's part reserved and contained by and

Premises comprised in lease,

and the reversion, &c.

Habendum,

for the residue of term wanting two days.

Declaration of trusts;—

To permit mortgagor to enjoy until default.

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press covenant for quiet enjoyment; and it is apprehended the same obligation would, even without an express covenant, attach to him by the implied warranty resulting from the words of demise (*vide ante*, Vol. 4, p. 372, 2nd ed.); which obligation, unless restricted as in the precedent in the text, would extend to purchasers from the mortgagee, in opposition to the obvious intention of the parties in such cases. The covenants in the precedent in the text are cautiously prepared, with the view of avoiding these objections.

16. UNDER-LEASE WITH TRUST FOR SALE.

in the hereinbefore recited indenture of lease, after such notice as hereinafter mentioned; and *Upon trust*, in case of and immediately after such default or failure by the said [*mortgagor*], his executors or administrators, in any or either of the particulars aforesaid, That then and in any or every such case, the said [*mortgagee*], his executors, administrators, or assigns, do and shall, if he or they think fit, sell the premises hereby assured, or intended so to be, or such part or parts thereof, either by public auction or sale, or private contract, as he or they may think proper, unto any person or persons, for the best price or prices in money that can be reasonably obtained for the same, and under and subject to such conditions and restrictions as he or they shall think proper, with liberty also for the said [*mortgagee*], his executors, administrators, or assigns, in his or their discretion, to buy in the same premises, or any part thereof, at any public sale, and to sell at any future public sale, or by private contract, the hereditaments so bought in, without being liable for any loss to be thereby occasioned, and to rescind or vary the terms of any contract for sale which may have been entered into; and do and shall make and execute all such assignments and assurances of the premises so sold, as shall be requisite or expedient for the completion of such sale or sales: AND do and shall stand possessed of the monies to arise by the sale or sales aforesaid, and also of such rents, issues, and profits (if any) of the premises hereby assured, or intended so to be, as may arise after the same shall have become liable to be sold as aforesaid, until such sale or sales thereof shall be made, (and which rents and profits the said [*mortgagee*], his executors, administrators, or assigns, shall be at liberty to receive, whether he or they shall afterwards proceed to sell the said premises or not); *Upon trust* therewith and thereout, in the first place, to pay all such costs, damages, and expenses as he or they shall sustain or be put into, in and about preparing for or making and completing such sale or sales as aforesaid, or otherwise in the execution of the trusts hereby in him and them reposed, or any matter or thing relating thereto, or in preserving the said premises from forfeiture, by paying the rent or performing the covenants on the lessee's part reserved and contained by and in the hereinbefore recited indenture of lease, with interest on all such costs, charges, damages, and expenses, at the rate of five pounds *per cent. per annum*, from the time or respective times of the expenditure thereof; and

To sell after default in payment of principal or interest, or in performance of covenants in lease.

With liberty to buy in at any auction.

Declaration of trust as to purchase-money.

To pay expenses of sale and perform covenants of lease.

16. UNDER-LEASE WITH TRUST FOR SALE.

in the next place to pay or retain unto himself and themselves, the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of £—— and interest, or so much thereof as shall not have been theretofore paid, whether the time for the payment of the said principal sum shall have arrived or not, according to the condition of the said recited bond or the covenant hereinafter contained in that behalf, together with such of the premiums and expenses of insurance hereinafter covenanted to be paid to the said [*mortgagee*], his executors, administrators, or assigns, as may then remain due to him or them, with interest thereon at the rate aforesaid, and *Upon trust* to pay the residue (if any) of the purchase-moneys, rents, issues and profits to arise and be received as aforesaid, unto the said [*mortgagor*], his executors, administrators, or assigns. AND *it is hereby declared*, that, after full payment of the said principal sum of £——, and the interest thereon, and of all such costs, damages, and expenses, and premiums and expenses of insurance, and interest as aforesaid, Then the premises hereby assured or intended so to be, or so much thereof (if any) as shall not have been disposed of under the trusts hereinbefore declared, shall be in trust for the said [*mortgagor*], his executors, administrators, and assigns, and be at his or their costs assigned, as he or they shall lawfully direct; *And also*, that every contract, sale, assignment, assurance, act, deed, matter, and thing, which shall be entered into, made, done, or executed by the said [*mortgagee*], his executors, administrators, or assigns, of or concerning the premises hereby assured or expressed so to be, or any part thereof, shall to all intents be valid both at law and in equity, although the said [*mortgagor*], his executors, administrators, or assigns, shall not execute the same, join therein, or assent thereto, and although he or they shall oppose or forbid the same: *And further*, that every receipt in writing under the hand or hands of the said [*mortgagee*], his executors, administrators, or assigns, for any purchase-moneys, rents, profits, or produce of the premises hereby assured, or intended so to be, or any part thereof, shall be a sufficient discharge for the sum or sums of money therein acknowledged to be received unto the person or respective persons paying the same moneys; and that such person or persons shall not, after obtaining such receipt

Declaration as to premises unsold.

That every contract and sale shall be binding on mortgagor.

That persons paying moneys shall not be bound to see to the application thereof.

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for the same, be obliged to see to the application, or be answerable for the loss, misapplication, or non-application thereof, or be obliged to inquire into the necessity or propriety of any sale or sales, or receipts of rents and profits under the trusts aforesaid, or be affected by express notice that such sale or sales, or receipt, is or are unnecessary and improper; *And it is hereby declared*, that the total amount of the principal moneys which shall be recoverable under the trusts of these presents (exclusive of the expenses to be incurred in and about any fire-insurance or insurances), shall not exceed the sum of £—— (*c*).

Limitation of amount of principal moneys.

Covenants by mortgagor—

AND the said [*mortgagor*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*mortgagee*], his executors, administrators, and assigns, in manner following, (that is to say), That the hereinbefore recited indenture of lease of or about the —— day of ——, is on the day of the date of these presents a good, valid, and subsisting lease, both at law and in equity, in respect of all the premises expressed to be thereby demised; *And* that all the covenants therein contained on the lessee's part have been duly observed and performed up to the day of the date of these presents; *And further* that until payment of the said sum of £——, and the interest thereon, and so long as he the said [*mortgagor*], his executors or administrators, shall be permitted to hold and enjoy the messuages or tenements and premises hereby assured and assigned, or receive the rents and profits thereof, he the said [*mortgagor*], his executors or administrators, will well and truly pay the rent and perform the covenants on the lessee's part reserved and contained in the same indenture of lease; *And further*, that the said [*mortgagor*] is now lawfully possessed of the messuage or tenement and premises by the same indenture of lease demised, or therein expressed so to be, for all the residue of the term of —— years thereby expressed to be granted therein, subject to the rent and covenants on the lessee's part in the same indenture reserved and contained; *And that* all and singular the same messuages or tenements and premises are so held by the same [*mortgagor*] free and clear of and from all

That original demise is valid;

That covenants therein have been performed;

To pay and perform future rents and covenants until sale;

That mortgagor is possessed of premises for the residue of term,

free from incumbrances, except as appears by these presents.

(*c*) *Vide* an observation, *ante*, Vol. 5, p. 520.

mortgages, annuities, judgments, executions, liens, charges, and incumbrances whatsoever, except as appears by these presents); *And further*, that the said [*mortgagor*], his executors and administrators, and every other person rightfully claiming any estate, right, title, charge, trust, or interests in, to, out of, or upon the messuages or tenements and premises hereby assured, or intended so to be, or any of them, (except the respective persons claiming in respect of the several estates or interests hereinbefore excepted, but, nevertheless, in respect of only the same estates or interests), shall and will at any time or times hereafter, upon every reasonable request made by the said [*mortgagee*], his executors, administrators, or assigns, or left by him or them with the tenants or occupiers of the same premises or any of them, but at the costs of the said [*mortgagor*], his executors or administrators, until the premises to which this covenant relates shall have been sold and assigned under the trusts hereinbefore contained, and, after such sale and assignment, then at the costs of the purchaser or purchasers thereof, his, her, or their executors, administrators, or assigns, make, do, and execute, and cause to be made, done, and executed, all such lawful and reasonable acts, deeds, devices, and assurances in the law whatsoever, for the more effectually assuring the said messuages or tenements and premises demised by the hereinbefore recited indenture of lease, or expressed or intended so to be, for all the residue which shall be then unexpired of the term of —— years wanting two days, hereby granted, according to the true intent and meaning of these presents; and also, shall and will at the like costs and charges, *if thereunto requested by the said* [*mortgagee*], *his executors, administrators, or assigns, by writing under his or their hand or hands, but not otherwise* (*d*), make, do, and execute, or cause to be made, done, and executed, all such assurances as aforesaid, for effectually vesting the messuages or tenements and premises hereby assured, or intended so to be, in the said [*mortgagee*], his executors, administrators, or assigns, for the said two days, being the residue not hereby assigned of the term of ——

16. UNDERLEASE WITH TRUST FOR SALE.

For further assurance.

To assign the residue of the term if required.

(*d*) These words are introduced to prevent the possibility of its being alleged to be compulsory on the covenantee to take an assignment. *Sed vide ante*, Vol. 5, p. 509.

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years, granted by the hereinbefore recited indenture of lease, not included in this demise, subject to such rent thereby reserved as shall thenceforth accrue and become payable, and to the observance thenceforth of the covenants on the lessee's part therein contained, but upon and for such trusts, intents, and purposes, and with and subject to such powers and provisoes as are hereinbefore expressed, declared, and contained of and concerning the same messuages or tenements and premises, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be lawfully devised or advised and required; *And moreover*, that, until the moneys hereby intended to be secured shall be fully paid and satisfied, or, (which shall first happen), until the messuages or tenements and premises hereby assured shall be sold and assigned under the trusts aforesaid, it shall be lawful for (but shall not be imperative on) the said [*mortgagee*], his executors, administrators, or assigns, to insure, and keep insured, in his or their own name or names, or otherwise, upon the same messuages or tenements and premises, in or with any public office or company in the city of London or county of Middlesex for insurance against damage by fire, any sum or sums of money not exceeding in the whole the sum of £——; and that he the said [*mortgagor*], his heirs, executors, or administrators, shall and will from time to time on demand pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, all such premiums, duty, and expenses, as he or they shall or may pay or expend in or about making or keeping on foot any such insurance or insurances, with interest thereon at the rate of five per cent. per annum: *And it is hereby declared*, that all moneys to be received by the said [*mortgagee*], his executors, administrators, or assigns, by virtue of any such insurance or insurances, shall (after payment thereout of the expenses of and incident to the receipt or recovery of the same), be applied in the same manner as hereinbefore directed concerning the moneys to arise from the sale or sales of the messuages or tenements and premises expressed to be hereby assured. And the said [*mortgagee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagor*], his heirs, executors, and administrators, that the said principal sum

Covenant by mortgagor to insure.

Declaration of trust of insurance moneys.

Covenant by mortgagee not to call in principal money;

of £——, lent and advanced to him on the security of the said hereinbefore recited bond, shall remain on the security of the said bond and of these presents for the term of seven years from the date hereof (*e*), except in the events hereinafter mentioned; and that he the said [*mortgagee*], his executors, administrators, or assigns, will not proceed to a sale of the messuages or tenements and premises hereby assured or intended so to be, or any part thereof, or enter into the possession or the receipt of the rents and profits of the same, or institute any proceedings at law or in equity by virtue of the said bond or of these presents, until the expiration of the said term of seven years or until one calendar month after default shall be made during the said period of seven years in the payment of the interest on the said principal sum of £——, or any part thereof, on any or either of the half-yearly days of payment of interest mentioned in the said bond, or until the said [*mortgagor*], his executors or administrators, shall fail to pay the rent and perform the covenants respectively reserved and contained by and in the hereinbefore recited indenture of lease, and on the lessee's part to be respectively paid and performed, after seven days' notice in writing shall have been given by the said [*mortgagee*], his executors, administrators, or assigns, to the said [*mortgagor*], his executors or administrators, or left for him or them at or upon the said mortgaged premises, calling upon him or them to pay the said rent or perform the said covenants; and if the said [*mortgagee*], his executors, administrators, or assigns, should commence any action at law against the said [*mortgagor*], his heirs, executors, or administrators, on the said recited bond, except at the time and in the events mentioned in this present covenant, then and in every such case these presents and this present covenant shall or may be pleaded or shewn in bar to such action (*f*); but nothing in this covenant contained shall extend to affect any purchaser or purchasers, or tenant or occupier, of the said premises, or any part thereof, either having or not having such notice as hereinbefore mentioned, [nor shall the same be deemed or

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nor institute any proceedings on bond or mortgage for a definite period.

(*e*) See, as to the effect of these clauses in general, *Stanhope* v. *Manners*, 2 Ed. 197.

(*f*) As to this, *vide ante*, Vol. 5, p. 200, 2nd ed.

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construed to extend to prevent or preclude the said [*mortgagor*], his heirs, executors, administrators, or assigns, from paying off and discharging the said principal sum of £—— at any time or times hereafter, he or they giving to the said [*mortgagee*], his executors, administrators, or assigns, the usual and proper notice of his or their intention so to do (*g*).]

Clause negativing implied warranty as to purchasers.

AND LASTLY, *it is hereby declared and agreed*, that neither the demise hereinbefore contained, nor any covenant entered into by the said [*mortgagor*], in and by these presents, shall extend or be construed to extend, to amount to a warranty by the said [*mortgagor*], his heirs, executors, or assigns, of the enjoyment of the messuages or tenements and premises hereby demised, free from and against the payment of the rent and the performance of the lessee's covenants reserved and contained by and in the hereinbefore recited indenture of lease, after the same premises shall have been sold and assigned by the said [*mortgagee*], his executors, administrators, or assigns, under the trusts hereinbefore

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(*g*) If the intention be (as it commonly is), that the power of deferring the payment shall be extended to the mortgagee, then, instead of the clause within brackets, insert the following covenant:—

Agreement by mortgagor not to pay mortgage-money for a given period.

"And in consideration of the covenant lastly hereinbefore contained, the said [*mortgagor*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with the said [*mortgagee*], his executors, administrators, and assigns, that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall not nor will pay or tender the said principal sum of £——, nor institute any suit or proceedings in equity for the redemption of the premises hereby assured or intended so to be, until the expiration of the said period of seven years from the date hereof, without the demand or requisition in writing of the said [*mortgagee*], his executors, administrators, or assigns, (he or they being authorized by the default of the said [*mortgagor*], his heirs, executors, administrators, or assigns, in payment of the interest as aforesaid, to make such demand or requisition), or without giving to the said [*mortgagee*], his executors, administrators, or assigns, twelve calendar months' notice in writing of his or their intention so to do, or leaving the same at his or their last or usual place of residence in England."

contained, any rule of law to the contrary notwithstanding (*h*). In witness, &c.

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(*h*) Although it is probable that the express covenant to pay the rent, &c., until the sale would be held to restrict the mortgagor's implied warranty on the words of demise, (on the principle adverted to, *ante*, Vol. 4, p. 371, 2nd ed.; and as to which now see *Stannard* v. *Forbes*, 1 Nev. & P. 633; 6 Ad. & Ell. 572), yet it seems to be desirable expressly to negative this liability. When a person, having an under-lease with a power of sale, exercises his power, he should, if possible, induce the mortgagor to concur in the sale, not for the purpose of giving it validity, (for that is beyond all doubt), but merely in order that, by granting his nominal reversion, he may make the purchaser assignee of the whole term, to avoid the technical incongruities attending the sale of an under-lease in such cases. The mortgagor, if well advised, would readily accede to this requisition, as he would thereby become entitled to the benefit of the purchaser's covenant of indemnity against the rent and covenants. In one instance, in order to avoid the difficulty here suggested, the mortgagor nominated a third person as his attorney to execute an assignment of the reversion in the event of sale. Such an authority of course, would be subject to revocation by the death or act of the mortgagor.

Suggestion as to under-leases with power of sale.

17. COVENANT *to surrender* COPYHOLDS *of* INHERITANCE *by* WAY *of* MORTGAGE (*a*). (VARIATION *where there is a* PRIOR MORTGAGE).

17. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part: WHEREAS the said [*mortgagor*] is seised of or well entitled unto the fee-simple in possession, according to the custom of the manor of ——, of and in the messuages or tenements, lands and hereditaments hereinafter described and covenanted to be surrendered, *free from all incumbrances* (*b*): AND WHEREAS the said [*mortgagor*], having

Parties.

Recital that mortgagor is seised in fee according to the custom of the manor.

Recital of

(*a*) As to mortgages of copyholds, *vide ante*, Vol. 5, pp. 234, 510.

(*b*) If there is a prior mortgage, add, instead of the words in italics—

" Subject to a certain conditional surrender made on or about the —— day of ——, whereby the said hereditaments were surrendered and assured by the said [*mortgagor*] To the use of [*prior mortgagee*], of &c., his heirs and assigns,

Variation, where there is a prior mortgage.

17. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

agreement to lend the money.

occasion for the sum of [*mortgage money*], hath applied to and requested the said [*mortgagee*] to advance and lend the same to him, which the said [*mortgagee*] hath agreed to do, upon having the re-payment thereof with interest secured by a mortgage of the said copyhold hereditaments, in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that, for and in consideration of [*mortgage-money*] the sum of £—— of lawful money of Great Britain and Ireland, paid by the said [*mortgagee*] to the said [*mortgagor*] at or before the execution of these presents, the receipt whereof the said [*mortgagor*] doth hereby acknowledge, and of and from the same and every part thereof doth acquit, release, and for ever discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns, the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his heirs and assigns: That the said [*mortgagor*], or his heirs, shall and will, at the costs and charges in all things of the said [*mortgagor*], his heirs, executors, or administrators, at the next court baron to be holden for the said manor of ——, or out of court, as soon as conveniently may be, either in person or by attorney, well and effectually surrender into the hands of the lord or lords, or lady or ladies of the said manor, according to the custom of the manor, ALL THAT (*describe parcels consisting of a house and lands*): Together with all and singular outhouses, edifices, buildings, ways, water-courses, trees, woods, underwoods, hedges, ditches, fences, profits, privileges, easements, advantages, rights, members, and appurtenances whatsoever, to the said several hereditaments and premises, or any part or parts thereof, belonging or appertaining, or now or at any time or times heretofore usually held, occupied, or enjoyed therewith; *And also* all the estate, right, title, and interest, claim and demand whatever, both at law and in equity, of the said [*mortgagor*], in, to, or out of, the said hereditaments: TO THE USE of the said [*mortgagee*], his heirs and assigns, for ever (*c*), *To the intent* that the said [*mortgagee*],

Testatum.

Mortgagor covenants to surrender to the mortgagee in fee.

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for securing to him the said [*prior mortgagee*], his executors, administrators, or assigns, the sum of £——, and interest."

(*c*) As to introducing a power of appointment *vide ante*, Vol. 5, p. 510, and the next precedent.

his heirs or assigns, may be admitted tenant or tenants of the said copyhold premises; *To hold* the same at the will of the lord, according to the custom of the said manor, and by and at the rents, suits, and services therefore due and of right accustomed; subject nevertheless to the proviso for redemption hereinafter contained. And the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his heirs or assigns, that until such surrender as aforesaid shall be made by the said [*mortgagor*], and the said [*mortgagee*], or his heirs, shall be admitted tenant or tenants of the said premises, he the said [*mortgagor*], or his heirs, shall and will stand and be seised of and interested in the said copyhold premises, upon trust for the said [*mortgagee*], his heirs or assigns, but subject nevertheless to the proviso for redemption hereinafter contained: Provided always, and it is hereby declared and agreed by and between the said parties to these presents, that, if the said [*mortgagor*], his heirs, executors, or administrators, or any of them, shall and do well and truly pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, at or in the common Dining Hall of Lincoln's Inn, in the county of Middlesex, the full sum of £—— of lawful money of Great Britain and Ireland, with interest for the same after the rate of five pounds for every one hundred pounds by the year, in manner following, (that is to say), the sum of [*half-year's interest*] being half one year's interest for the said sum of £——, after the rate aforesaid, upon the —— day of —— next ensuing the date of these presents, and the further sum of £——, being the said principal sum of £——, and one other half-year's interest thereon after the rate aforesaid, upon the —— day of —— then next following, and which will be in the year of our Lord —— (*d*), without

17. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

(*d*) Some persons add—

"And if the said [*mortgagor*], his heirs, executors, or administrators, do and shall further well and truly pay or cause to be paid unto the said [*mortgagee*], his heirs, executors, administrators, or assigns, on demand, all rents, fines, and other outgoings and expenses (if any) which he the said [*mortgagee*], his heirs, executors, administrators, or assigns, may have paid or incurred in respect of the

Variations, where proviso for redemption extends to the payment of fines.

17. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

any deduction or abatement whatsoever, then these presents, and the surrender to be made of the said copyhold hereditaments and premises as aforesaid, shall determine and be absolutely void, to all intents and purposes whatsoever: AND, for the consideration aforesaid, he the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his executors, administrators, and assigns, that he the said [*mortgagor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £——, and interest, at the respective days and times and in the manner hereinbefore mentioned, and to be appointed for payment thereof in the surrender hereinbefore covenanted to be made as aforesaid, without making any deduction or abatement whatsoever out of the same or any part thereof, for or on account of taxes, or any other cause, matter or thing whatsoever. *And* the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth further covenant and agree with the said [*mortgagee*], his heirs and assigns in manner following, that is to say, that he the said [*mortgagor*] now is lawfully and rightfully seised of and in, or well entitled unto, the copyhold hereditaments and premises hereinbefore covenanted to be surrendered, with their appurtenances, for an absolute and indefeasible estate of inheritance in fee-simple in possession, at the will of the

Covenant to pay the principal and interest.

Covenants by mortgagor, for title,

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copyhold hereditaments and premises hereby covenanted to be surrendered, or any part thereof (not exceeding, with the said sum of [*mortgage-money*], the principal sum of £——), with interest for the same, at the rate aforesaid, from the time or respective times of the expenditure thereof," &c.

But, even without a clause of this nature, a mortgagor would not be permitted by a court of equity to redeem, without reimbursing the mortgagee these sums with interest at 4 per cent. (the clause, it will be observed, gives 5 per cent.) If, however, a surrender, (and the principle, of course, applies to any other conveyance), were made upon condition to pay principal and interest on a given day, without any provision as to *fines*, &c., the mortgagee's estate at law would cease on tender of the principal and interest alone; and therefore the clause in question may, it is apprehended, be usefully inserted, with a view to such a case.

lord, according to the custom of the said manor of ——; *And that* he the said [*mortgagor*] now hath in himself good right and lawful and absolute authority to surrender the copyhold hereditaments and premises hereinbefore covenanted to be surrendered or intended so to be, and every part and parcel of the same, with their appurtenances: *To the use* of the said [*mortgagee*], his heirs, and assigns, at the will of the lord, according to the custom of the said manor, and according to the covenant hereinbefore contained; *And further*, that in case default shall be made in payment of the said sum of £——, and the interest thereon, or any part of the same respectively, at the several days or times hereinbefore appointed for the same, then, and immediately thereupon, it shall be lawful for the said [*mortgagee*], his heirs and assigns, (he or they having been duly admitted by virtue of the surrender to be made as aforesaid), at all times thereafter to enter into and upon, have, hold, and enjoy, all and singular the copyhold hereditaments and premises hereinbefore covenanted to be surrendered, or intended so to be, and every part and parcel of the same, with their appurtenances, and to receive and take the rents, issues, and profits thereof according to the true intent and meaning of these presents, without any let, suit, trouble, eviction, or denial whatsoever, of, from, or by the said [*mortgagor*], his heirs, or assigns, or any person or persons whomsoever, other than and except the person or persons whose estate or interest, or several estates, or interests, is or are hereinafter excepted, for or in respect of the same estate or interest, or several estates or interests; *And that* free and clear, and freely, clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise by him the said [*mortgagor*], his heirs, executors, or administrators, at his and their own costs and charges in all things, well and sufficiently protected and kept indemnified of, from, and against all former and other grants, mortgages, leases, surrenders, bargains, sales, jointures, free bench, uses, trusts, wills, entails, annuities, estates, titles, liens, charges, and incumbrances whatsoever (*e*), except the

17. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

that he has good right to convey,

for quiet enjoyment after surrender, admittance, and default,

free from incumbrances;

(*e*) "other than and except the said surrender by way of mortgage, made to the use of the said [*prior mortgagee*], as aforesaid, and the principal money and interest thereby secured, and also"

17. COVENANT TO SURRENDER COPYHOLDS BY WAY OF MORTGAGE.

for further assurance.

rents and services henceforth to become due and to be paid, done, and performed in respect of the same premises, according to the custom of the said manor of ——; *And moreover*, that he the said [*mortgagor*], his heirs and assigns, and every other person whosoever, lawfully claiming or to claim any estate, right, title, trust, or interest, at law or in equity, in, to, or out of the copyhold hereditaments and premises hereinbefore covenanted to be surrendered, or intended so to be, or any part or parcel thereof (other than and except the person or persons whose estate or interest or several estates or interests, is or are hereinbefore excepted, in respect of the same estate or interest, or several estates and interests), shall and will at all times hereafter on every reasonable request of the said [*mortgagee*], his heirs or assigns, but at the sole costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, until the said equity of redemption in the said hereditaments, shall, by foreclosure, or otherwise, have become barred, and thenceforth at the costs and charges of the said [*mortgagee*], his heirs, or assigns, make, do, and execute all such further and other lawful acts, deeds, surrenders, conveyances, and assurances in the law whatsoever, for more effectually and absolutely surrendering and assuring the said copyhold hereditaments and premises hereinbefore covenanted to be surrendered, or any part or parcel of the same, with their appurtenances, *To the use* of the said [*mortgagee*], his heirs, or assigns, at the will of the lord, according to the custom of the said manor, and to the true intent and meaning of these presents, as by the said [*mortgagee*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required. (*Add covenants to insure against fire if so intended.*) *Provided also,* and it is hereby agreed and declared, that until default shall be made in payment of the said principal sum of £——; and interest, at the respective times, and in the manner hereinbefore appointed for the payment thereof, respectively, it shall be lawful for the said [*mortgagor*], his heirs or assigns, peaceably and quietly to hold and enjoy the said hereditaments and premises, and receive the rents and profits thereof, without any interruption or denial of or by the said [*mortgagee*], his heirs or assigns. IN WITNESS, &c.

18. CONDITIONAL SURRENDER *out of Court of a* COPYHOLD *of* INHERITANCE, *reserving to the Mortgagee a general* POWER *of* APPOINTMENT.

18. CONDITIONAL SURRENDER OF COPYHOLDS OF INHERITANCE.

Manor of ——, *in the County of* —— } BE IT REMEMBERED, that, on the —— day of &c., [*mortgagor*], &c. (*a*), one of the customary tenants of the said manor, came before [*steward*], gentleman, steward of the said manor (*b*), and in consideration of the sum of £—— to the said [*mortgagor*] (*a*) in hand then paid by [*mortgagee*], of &c., (*c*) (*d*) did out of court surrender into the hands of the lord of the said manor by the hands and acceptance of the said steward (*e*) by the rod, according to the custom of the said manor: ALL &c. (*describe the lands*) with the appurtenances: And the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; *And all* the estate, right, title, interest, use, trust, benefit, property, claim, and demand whatsoever of the said [*mortgagor*] (*f*), in, to, or out of the same premises and every part thereof; *To such uses*, upon such trusts, and for such intents and purposes as the said [*mortgagee*] shall at any time or times hereafter, by any deed or deeds, or by his last will, direct or appoint, and in default of such direction or appointment (*g*),

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(*a*) If the mortgagor's wife joins in the surrender, add—"and [*wife*] his wife, customary tenants, &c."

Variation where wife joins, &c.

(*b*) *Or*, "before [*deputy steward*], of &c., deputy steward of [*chief steward*], of &c., chief steward of the said manor."

(*c*) If the mortgage is to secure an existing debt, say—"in consideration of the sum of £——, due and owing from the said [*mortgagor*] to the said [*mortgagee*]."

(*d*) "and the said wife being first examined by the said steward, [*or*, deputy steward], separately and apart from her said husband, and freely consenting thereto."

(*e*) *Or*, "deputy steward."

(*f*) "and [*wife*] his wife respectively."

(*g*) The insertion of a power of this nature would be convenient, because it seldom happens that a mortgagee of copyholds is admitted, and

18. CONDITIONAL SURRENDER OF COPYHOLDS OF INHERITANCE.

To the use of the said [*mortgagee*], his heirs and assigns for ever, *To hold* by copy of court roll, at the will of the lord, according to the custom of the said manor, at the rents and services therefor due and of right accustomed, subject nevertheless to and upon this express condition, that, if the said [*mortgagor*] (*g*), his heirs, executors, or administrators, do and shall well and truly pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of £——, of lawful British money, on the —— day of —— next, together with interest for the same after the rate of 5*l.* per centum per annum, computed from the day of the date of this surrender, clear of all taxes, and other deductions whatsoever, then this surrender is to be void and of no effect, otherwise to remain in full force and virtue (*h*).

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such a power enables an unadmitted mortgagee on the occasion of a transfer of the mortgage, or an exercise of the power of sale (if there is one) by means of an appointment to confer on the transferree or purchaser the right to be admitted. Supposing, too, the mortgagee should have found it necessary to be admitted, for the purpose of possession, &c., the power of appointment would enable him to reconvey the estate to the mortgagor, on payment of the debt, without a re-surrender. If the mortgagee should not have been admitted, an acknowledgment of satisfaction would be sufficient. (*Vide ante*, Vol. 5, pp. 234, 510).

(*g*) "and [*wife*] his wife, or either of them, their or either of their heirs," &c.

(*h*) It should be observed, that, instead of a deed of covenants to accompany a conditional surrender, the mortgagor sometimes gives a bond conditioned for the payment of the money, quiet enjoyment, &c. The following is a short form of such a bond:—

BOND ACCOMPANYING CONDITIONAL SURRENDER OF COPYHOLDS.

KNOW ALL MEN, BY THESE PRESENTS, *That* I [*mortgagor*], of ——, am held, and firmly bound, to [*mortgagee*], of ——, in the sum of [*twice the principal*] of lawful British money, to be paid to the said [*mortgagee*], or to his certain attorney, executors, administrators, or assigns: *For* which payment, to be well and truly made, I bind myself, my heirs, executors, and administrators, and each of them, firmly by these presents; *Sealed* with my seal, and dated this —— day of ——.

Recital of surrender.

WHEREAS the above-bounden [*mortgagor*], being a copyhold tenant of the manor of ——, in the county of ——, in respect of the piece or parcel of land and hereditaments hereinafter mentioned, has this day, in consideration of the

BOND ACCOMPANYING CONDITIONAL SURRENDER OF COPYHOLDS.

sum of £——, of lawful British money, to him then paid by the above-named [*mortgagee*], surrendered into the hands of the lord (*or*, lady, *as the case may be*) of the said manor, by the acceptance of [*steward*], of &c., the steward of the said manor, *All that* piece or parcel of land called ——, situate, lying, and being in the parish of ——, in the said county of ——, and now in the occupation of ——; and which said piece or parcel of land was formerly estimated or reputed to contain ten acres, but whereof the actual contents have been ascertained by a recent admeasurement to be eight acres and thirty-five perches only (*a*), with the appurtenances thereto belonging: To such uses, upon such trusts, and for such intents and purposes, and in such manner and form, as the said [*mortgagee*], at any time or times thereafter, should, by any deed or deeds, or by his last will, appoint; and in default of such appointment, *To the use* of the said [*mortgagee*], his heirs and assigns for ever; to hold by copy of court roll, at the will of the lord, according to the custom of the said manor, at the rents and services therefor due and of right accustomed; subject nevertheless to a proviso or condition for the redemption of the said copyhold premises, and the avoidance of the said surrender, if the said [*mortgagor*], his heirs, executors, or administrators, should faithfully pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, and assigns, the sum of £——, and interest thereon after the rate of 5*l.* for every 100*l.* by the year, on the —— day of —— now next ensuing, and also all heriots, fees for admittance, and other fines, fees, and customary dues and payments whatsoever, (not exceeding in the whole, together with the principal sum of £——, hereinbefore mentioned, the sum of £—— (*b*)), which the said [*mortgagee*], his heirs, appointees, or assigns, shall or may pay or become liable to pay in respect of the said copyhold premises, or any part thereof, at the time of his ad-

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Remark as to difference between actual and estimated quantity.

(*a*) Difficulty is often occasioned in titles by the difference between the estimated and actual quantities of land. Where such difference is found to exist, it is advisable to shew it on the face of the deeds; the estimated quantity (by which, probably, it is described in the anterior deeds) should be stated, in order that the land conveyed may the more easily be identified with the land which is the subject of those deeds; the actual quantity also should, for obvious reasons, be made apparent.

(*b*) As to this, *vide ante*, Vol. 5, p. 520, n.

BOND ACCOMPANYING CONDITIONAL SURRENDER OF COPYHOLDS.

mission thereto, or previously or subsequently to such admission, with interest on the sum and sums of money so paid at the rate aforesaid, without making any deduction out of the said several payments on any account whatsoever. Now THE CONDITION *of the above-written bond or obligation is such*, that, if the said [*mortgagor*], his heirs, executors, or administrators, do and shall pay or cause to be paid unto the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, the said principal sum of £——, and interest, and all sums of money for heriots, fines, and fees, for admittance, and other fines and fees, and customary dues and payments whatsoever, (not exceeding in the whole the said sum of £——), which he the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, shall pay or become liable to pay in respect of the said copyhold premises, at the time of his admission thereto, or previously or subsequently to such admission, with interest for the same after the rate aforesaid, according to the true intent and meaning of the proviso or agreement for redemption of the premises contained in the said surrender: *And also*, if he the said [*mortgagor*] was, at the time of making the said surrender, lawfully and rightfully seised to him and his heirs of the said copyhold premises, to his and their own use, for an absolute estate of inheritance therein, by copy of court roll at the will of the lord, according to the custom of the said manor; *And also*, if he then had good right, full power, and lawful and absolute authority to surrender the same to the uses hereinbefore expressed or recited, in manner and form and according to the tenor and effect of the said surrender; *And also*, if the said [*mortgagee*], his heirs, appointees, or assigns, do and shall from time to time, and at all times for ever, from and after default shall have been made in payment of the said principal and interest monies, or any part thereof, at the time and in the manner aforesaid, and from and after he or they shall have been admitted to the said hereditaments by virtue of the surrender hereinbefore recited, peaceably and quietly hold and enjoy the said hereditaments and premises, and receive the rents and profits thereof, without any interruption or denial whatsoever of or by any person or persons whomsoever; *And that* free and clear from all estates, liens, charges, and incumbrances whatsoever, (save and except the rents, duties, suits, and services for the said copyhold premises henceforth to become due and

Condition, if mortgagor should pay mortgage-money, fines, &c.

and if he were lawfully seised

and had right to convey

free from incumbrances,

of right accustomed, according to the custom of the said manor); *And moreover*, if the said [*mortgagor*] and his heirs, and all persons claiming or to claim any estate, charge, or interest in or to the said copyhold premises, (except the person or persons whose estate or interest, or respective estates or interests is or are hereinbefore excepted) do and shall, at the request of the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, but at the costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, until the equity of redemption under or by virtue of the aforesaid proviso or agreement shall be barred, and thenceforth at the costs and charges of the said [*mortgagee*], his heirs, appointees, or assigns, make, do, and execute, or cause to be made, done, and executed, all such further and other surrenders and assurances for the more effectually conveying and assuring the said copyhold premises, with the appurtenances, to the uses hereinbefore recited, according to the true intent and meaning of the said recited surrender, as the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, or his or their counsel in the law, shall reasonably advise and require: Then the above-written bond or obligation to be void, or else to be and remain in full force and virtue.

BOND ACCOMPANYING CONDITIONAL SURRENDER OF COPYHOLDS.

and execute further assurances.

Bond to be void.

Signed, sealed, and delivered in the presence of ——.

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19. DEED (*accompanying a* CONDITIONAL SURRENDER *of* COPYHOLDS), *containing* COVENANTS *for Payment of* PRINCIPAL *and* INTEREST, *and declaring* TRUSTS *for* SALE *in default of Payment* (*a*). *Also Covenants for* TITLE. (VARIATION *where Mortgage is made to a* SOLICITOR *as a* SECURITY *for* COSTS).

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR FOR COSTS.

THIS INDENTURE, made the —— day of ——, in the year of our Lord ——, BETWEEN [*mortgagor*], of &c., of

Parties.

(*a*) Perhaps it is more correct to introduce the trusts for sale into the surrender, as otherwise the surrender describes part only of the transaction; but the present is the more usual course, the parties being in general anxious not unnecessarily to increase the length of the surrender, in order to save expense.

As to inserting trusts for sale in a surrender.

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR.

the one part; and [*mortgagee*], of &c., of the other part. [WHEREAS the said [*mortgagee*] has this day (*b*) lent and advanced unto the said [*mortgagor*] the sum of £——, at interest, as the said [*mortgagor*] doth hereby acknowledge. AND WHEREAS, for securing the re-payment thereof, the said [*mortgagor*] has also this day surrendered (*c*)] into the hands of the lord of the manor of —— in the county of ——, by the acceptance of [*steward*], steward of the said manor, according to the custom thereof, All that (*describe parcels*), To such uses, upon such trusts, and for such intents and purposes, and in such manner and form, as he the said [*mortgagee*] shall at any time or times (subject nevertheless to the proviso or condition thereinafter mentioned) by any

Recital of money advanced.

Surrender.

(*b*) If the surrender be antecedent to the present deed, it may, of course, be recited as such; but it is more common to recite the surrender as contemporaneous.

(*c*) Where the security is to an attorney for costs, introduce the following recital instead of that within brackets:—

Variation where mortgage is to a solicitor for costs.

"WHEREAS the said [*mortgagee*] has for some time past acted as the attorney, solicitor, and agent of the said [*mortgagor*], in prosecuting and defending various actions at law and suits in equity, and in preparing conveyances and assurances, and otherwise in the management and conduct of the business and affairs of the said [*mortgagor*]; AND WHEREAS there is now due and owing from the said [*mortgagor*] to the said [*mortgagee*], for the costs and charges incurred in the business transacted for him as aforesaid, and for disbursements made in the course of such business, the sum of £——, as appears by several bills of costs duly made out and delivered by the said [*mortgagee*] to the said [*mortgagor*], in the month of —— last, which the said [*mortgagor*] does hereby acknowledge; AND WHEREAS the said [*mortgagor*] has carefully perused and examined the several items contained in the said bills of costs, and is perfectly satisfied therewith: but being unable at present to pay the amount of the said bills, he has requested the said [*mortgagee*] to accept a security on the copyhold hereditaments of the said [*mortgagor*] hereinafter mentioned, for the payment of the said sum of £——, with interest, to which request and proposal the said [*mortgagee*] has assented and agreed; AND WHEREAS, in pursuance of the said agreement, the said [*mortgagor*] has this day surrendered," &c.

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR.

deed or deeds, to be attested by one witness or more, direct or appoint, and in default of such direction or appointment, and subject thereto, *To the use* of the said [*mortgagee*], his heirs and assigns for ever, to be holden at the will of the lord, and according to the custom of the said manor, at and under the rents and services therefor due and of right accustomed, *Subject nevertheless* to a proviso or condition for redemption of the said premises, and avoidance of the said surrender, on payment by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £—— of lawful British money, on the —— day of ——, which will be in the year ——, with interest for the same in the meantime at the rate of 5*l.* of like lawful money for every 100*l.* by the year, by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, yearly and every year, the first of the said quarterly payments to be made on the —— day of —— next; And also on payment by the said [*mortgagor*], his heirs, executors, or administrators, of all rents, taxes, rates, assessments, and charges in respect of the said premises which may have been paid or incurred by the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, as hereinafter mentioned, and interest thereon at the rate aforesaid. AND WHEREAS, upon the treaty (*d*) for the said loan, it was agreed, that, for the more effectually securing the payment of the said principal sum and interest, the said [*mortgagor*] should enter into the covenants and make the declarations hereinafter contained. NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for the considerations hereinbefore expressed, the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and

To the use of mortgagee in fee.

Proviso for redemption.

Principal money payable at a future day, interest in the meantime quarterly.

Agreement for present security.

Testatum.

(*d*) If the security is for costs, *ut supra*, instead of the recital in the text, insert the following :—

"AND WHEREAS, for the more effectually securing the payment of the said sum of £——, due and owing to the said [*mortgagee*] as aforesaid, and interest thereon, the said [*mortgagor*] has proposed and agreed to enter into the covenants and make the declarations hereinafter contained."

As to the validity of securities given to solicitors by their clients, *vide ante*, Vol. 5, p. 337.

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR.

agree with the said [*mortgagee*], his executors, administrators, and assigns, in manner following, (that is to say), that he the said [*mortgagor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £—— of lawful money as aforesaid, on the —— day of ——, which will be in the year of our Lord ——, and also interest for the same in the meantime, after the rate of 5*l.* of like lawful money for every 100*l.* by the year, by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, yearly and every year, the first of the said quarterly payments to be made on the —— day of —— next; *And also,* shall and will in the meantime, and until full payment and satisfaction of the said principal sum and interest monies as aforesaid, well and truly pay, discharge, and satisfy all and all manner of annual and other rents, taxes, rates, and assessments whatsoever, which now are, or at any time hereafter shall be charged upon or payable in respect of the hereditaments hereinbefore mentioned to have been surrendered, or any of them, and whether such taxes, rates, and assessments shall be in the nature of those now in being, or not. PROVIDED ALSO, *and it is hereby further declared and agreed,* and particularly the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant, declare, and agree, with and to the said [*mortgagee*], his heirs, executors, administrators, and assigns, that, in case default shall happen to be made in payment of the said principal sum of £——, or of the interest thereof, or of any part of the same respectively, according to the true intent and meaning of the proviso hereinbefore mentioned and referred to, and the covenant hereinbefore contained for payment thereof, or either of them, then and in such case it shall be lawful for the said [*mortgagee*], his appointees, heirs or assigns, and he and they is and are hereby authorized and empowered, at any time thereafter to enter into or upon the said hereditaments, or any part of the same, or into the receipt of the rents and profits thereof, and to let the same for such periods, upon such terms, and at such rent or rents in the nature of a rack-rent, as he or they shall think proper, with liberty to make compositions with any of the tenants in respect of such rents; *Provided also,* and it is hereby further agreed and declared, that, in case such de-

Covenant by mortgagor to pay principal and interest monies;

To pay taxes.

Power of sale in default of payment.

fault of payment as aforesaid shall be made by the said [*mortgagor*], his heirs, executors, administrators, or assigns, and the same shall be continued for the period of one calendar month next after any such default shall have been made, then and in such case, and immediately thereupon, or at any time thereafter, it shall be lawful for the said [*mortgagee*], his heirs, appointees, or assigns, without any further consent of, or authority from, the said [*mortgagor*], his heirs or assigns, and notwithstanding the acceptance of interest after the said premises shall have become saleable, absolutely to sell and dispose of the —— and premises surrendered to the said [*mortgagee*], his heirs and assigns as aforesaid, with their and every of their appurtenances, either together or in parcels, and either by public sale or private contract, to any person or persons whomsoever, and subject to any special or other conditions or restrictions; with liberty, if he or they shall think proper, to purchase in the said hereditaments, or any of them, and again sell the same as aforesaid, without being responsible for any loss or losses that may be occasioned thereby, and also to rescind or vary the terms of any contract for sale, and to surrender, appoint, or otherwise assure the same premises to the purchaser or purchasers thereof, his, her, or their heirs and assigns, as he, she, or they shall direct, freed and absolutely discharged of and from all equity and right of redemption whatsoever, of or by him the said [*mortgagor*], his heirs or assigns, or any person or persons lawfully or rightfully claiming from or under him or them; *And it is hereby declared*, that the receipt or receipts of the said [*mortgagee*], his heirs, appointees, or assigns, or of his or their agent thereunto lawfully authorized, for the monies to be received on any such sale or sales as aforesaid, or out of the rents and profits in the meantime, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof, and that the purchaser or purchasers of the said hereditaments shall not be obliged to inquire whether any default shall have been made in payment of the monies hereby intended to be secured, according to the covenant and proviso respectively hereinbefore contained and referred to, nor shall be affected by express notice that no such default had been made, and that the said sale or sales was or were unnecessary and improper; *And it is hereby further agreed and declared*, by and between the said parties to

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR.

Receipts of mortgagee to discharge purchasers.

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR.

these presents, that the said [*mortgagee*], his heirs, appointees, or assigns, shall and will apply and dispose of the monies arising from the said sale or sales, in the first place, (after deducting the costs attending the same, and all other incidental expenses), in payment and satisfaction of the said principal sum of £——, together with all interest that shall be then due for the same, without any deduction or abatement whatsoever; and, after full payment and satisfaction of the principal and interest monies, costs, and expenses hereinbefore mentioned, shall and will pay over the clear residue or surplus (if any) of such purchase-monies unto the said [*mortgagor*], his heirs, or assigns; and, at the costs and charges of the said [*mortgagor*], his heirs or assigns, appoint, surrender, and assure to him or them all such parts of the said hereditaments and premises (if any) as shall not have been sold and conveyed under the power hereinbefore contained, and cause satisfaction to be acknowledged on the rolls or records of the court of the said manor; *And it is hereby further agreed and declared*, that the said [*mortgagee*], his heirs, appointees, or assigns, shall and will apply and dispose of the rents and profits (if any) which shall or may come to his or their hands by virtue of these presents (after deducting the costs and expenses attending the receipt and recovery thereof, [and of keeping the said premises in repair and insured against fire], and all other expenses incurred in the execution of the trusts and powers of these presents, and in paying and keeping down the interest (if any) which shall or may be then due and in arrear on the said principal sum, and, after payment and satisfaction thereof, shall and will, at the option of the said [*mortgagee*], his executors, administrators, or assigns, either retain the remainder or surplus of the said rents and profits in or towards liquidation of the said principal sum of £——, or pay the same over to the said [*mortgagor*], his heirs or assigns; *Provided also, and it is hereby further agreed and declared*, that the aforesaid power of sale, and the other powers and authorities hereinbefore contained, are not intended and shall not be deemed to be in the nature of personal trusts, but as powers and remedies incident to this present mortgage security, and shall and may devolve to and be exerciseable by the person or persons in whom the legal ownership of the said hereditaments shall for the time being be vested by descent, devise, conveyance, or otherwise; *And that* it shall be lawful for any person or

Powers to vest in the person having the legal ownership in the lands.

Solicitors exercising the power

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR.

persons executing or performing any of such trusts, powers, or authorities, who may happen to be of the legal profession, to make the usual charges for business professionally transacted in relation to the said hereditaments in mortgage to him or them as aforesaid, any rule of law or equity to the contrary notwithstanding; *And further*, that the power of sale hereinbefore contained shall not operate to destroy, prejudice, or affect the right of the said [*mortgagee*], his heirs, appointees, or assigns, to foreclose the equity of redemption of or in the said copyhold hereditaments and premises (*e*). AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his heirs and assigns, that he the said [*mortgagor*], at the time of making the surrender hereinbefore recited, had good right and absolute authority to surrender the said ——, so surrendered as aforesaid to the uses hereinbefore expressed, in manner hereinbefore recited, and according to the true intent and meaning of the said surrender; *And also*, that (subject to the proviso and declaration hereinafter contained) it shall be lawful for the said [*mortgagee*], his heirs, appointees, and assigns, from time to time, and at all times after he or they shall have been admitted to the said copyhold hereditaments and premises, peaceably and quietly to enter into or upon, and hold and enjoy the same, and to receive and take the rents and profits of the same, without any eviction, interruption, or denial whatsoever, from or by the said [*mortgagor*], his heirs or assigns, or any person or persons whomsoever, except in respect of the interest hereinafter excepted; *And that* free, and clear, or freely, clearly, and absolutely discharged, or by the said [*mortgagor*], his heirs, executors, or administrators, effectually kept indemnified from and against all former and other estates, rights, titles, charges, and incumbrances whatsoever, except the customary rents and services henceforth to become due and payable to the lord of the said manor, in respect of the said hereditaments and premises; *And also*, that the said [*mortgagor*] and his heirs, and every person whosoever having or rightfully claiming or to claim any estate, right, title, or interest at law or in equity, in, or to, or out of the said ——, or any part thereof, except only in respect of the interest herein-

of sale, to make charges.

Power not to prejudice right of foreclosure.

Covenant by mortgagor that he had good right to surrender;

for quiet enjoyment after default,

and for further assurance.

(*e*) This is a usual, but not a necessary, provision.

19. COPYHOLDS IN TRUST FOR SALE. SECURITY TO A SOLICITOR.

before excepted, will or shall at any time, and from time to time, upon every reasonable request of the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, and at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, until the said hereditaments and premises shall be sold and assured under the power of sale hereinbefore contained, or until the right or equity of redemption therein shall, by foreclosure or otherwise, become barred or extinguished, and thenceforth at the costs and charges of the said [*mortgagee*], his heirs, appointees, or assigns, make, execute, and perfect every such lawful and reasonable act, surrender, or assurance in the law whatsoever, for more effectually surrendering, releasing, or otherwise assuring the said hereditaments and premises, and every part of the same, with their appurtenances, to the use of the said [*mortgagee*], his heirs, appointees, or assigns, or as he or they shall direct, according to the true intent and meaning of these presents, as by the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, or his or their counsel in the law, shall be advised and required. (*Add, if property consists of buildings, a covenant to insure against fire*). PROVIDED ALWAYS, and it is hereby agreed and declared, that, until default shall be made by the said [*mortgagor*], his heirs, executors, and administrators, in payment of the said sum of £——, or the interest thereof, or any part thereof respectively, at the respective times and in manner hereinbefore provided for payment of the same, it shall be lawful for the said [*mortgagor*], his heirs, or assigns, to hold and enjoy, and take the rents and profits of the said —— and premises, without any interruption or denial whatsoever of or by the said [*mortgagee*], his heirs, executors, administrators, appointees, or assigns, or of or by any person or persons rightfully claiming or to claim, by, from, under, or in trust for him or them. IN WITNESS &c.

Mortgagor to enjoy until default.

20. MORTGAGE *in Fee by* APPOINTMENT *and* RELEASE, *for the Purpose of* RAISING *Money to* PAY *the* DEBTS *of the last* OWNER, *who devised the Lands to the Mortgagor charged with Debts.*

20. TO RAISE MONEY TO PAY DEBTS OF DEVISOR.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. WHEREAS [*testator*], of ——, deceased, in and by his last will and testament in writing, bearing date on or about the —— day of ——, 1837, duly executed and attested as the law then prescribed for the devise of freehold estates (*a*), devised in the words or to the effect following, that is to say,— "First, I direct that all my just debts and funeral and testamentary expenses shall be paid (*b*), and I give and devise all my messuages, lands, tenements, and hereditaments, and all other my real estate whatsoever and wheresoever, to such uses, upon such trusts, and for such estates, intents, and purposes, as my son [*mortgagor*], shall by deed or will, to be attested by two witnesses, direct or appoint; and in default of such direction or appointment, *To the use* of the said [*mortgagor*], his heirs and assigns for ever." AND WHEREAS the said [*testator*] died on the —— day of ——, without revoking or altering the

Parties.

Recital of will of testator;

(*a*) If the will was subsequent to 1837, and therefore subject to the new law, the words "as the law then prescribed for the devise of freehold estates" should be omitted, since the statute of 7 Will. 4 & 1 Vict. c. 26, makes no distinction between wills of freehold and wills of personal estate as to the ceremonial of attestation.

(*b*) As to the liability of a mortgagor or purchaser from devisees in trust to see to the payment of debts or legacies, *vide ante*, Vol. 5, p. 141. It should be observed, that, where a testator has charged his real estate with debts, but, the personal estate being sufficient to satisfy them, the lands are not wanted, and the devisee sells or mortgages for his own benefit, the fact should not be recited, and nothing should be stated to shew that the sale or mortgage is not made for the purpose of rendering the property available for the purposes expressed as to the charge. In such a case, the best mode is to make no recital as to the purposes of the loan, and then the presumption would be in favour of the legal propriety of the transaction.

As to mortgages, &c. of lands charged with debts.

20. TO RAISE MONEY TO PAY DEBTS OF DEVISOR.

devise in his said will; which will, soon after his decease, was proved in the Prerogative Court of the Archbishop of Canterbury; AND WHEREAS the personal estate of the said testator was insufficient to discharge the simple contract debts due and owing from him at the time of his decease; AND WHEREAS the said [*mortgagor*] has been advised that the terms in which the said testator directed his debts to be defrayed, would, according to the true construction of the said will, have the effect of charging such debts upon his real estate devised to the said [*mortgagor*], as hereinbefore recited; AND WHEREAS the said [*mortgagor*], being desirous to raise the sum of £——, for the purpose of enabling him to pay the debts of the said [*testator*], the testator, remaining unsatisfied out of his personal estate as aforesaid, hath requested the said [*mortgagee*] to lend and advance to him the said sum at interest, on security of the said devised hereditaments, which he the said [*mortgagee*] hath consented and agreed to do. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said sum of £—— of lawful British money to the said [*mortgagor*] in hand well and truly paid by the said [*mortgagee*], at or immediately before the execution of these presents, the receipt of which said sum of £ —— the said [*mortgagor*] doth hereby acknowledge, and from the same and every part thereof doth acquit, release, and discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns, he the said [*mortgagor*], by virtue and in pursuance of the power or authority given and reserved to him in and by the hereinbefore in part recited will and also of every other power and authority enabling him in this behalf, *Doth*, by this present deed, sealed and delivered by him in the presence of, and attested by, the two credible persons whose names are hereupon indorsed as witnesses attesting the execution of these presents by him, direct, limit, and appoint, That all and singular the messuage or dwelling-house, piece or parcel of land, and hereditaments hereinafter described, and hereby released or otherwise assured, or intended so to be, with their and every of their appurtenances, shall henceforth remain, continue, be, and enure To THE USE of the said [*mortgagee*], his heirs and assigns for ever; subject, nevertheless, to the proviso or agreement for redemption

Personalty insufficient to pay testator's debts;

Mortgagor advised that the real estate is charged.

Recital of agreement for loan.

Testatum.

In consideration of mortgage-money,

Mortgagor, by virtue of his power,

appoints

hereditaments after described

To the use of mortgagee in fee.

hereinafter contained: AND THIS INDENTURE ALSO WITNESSETH, that, for the considerations hereinbefore expressed, and by way of auxiliary or secondary assurance only, he the said [*mortgagor*] *Hath* granted, bargained, sold, and released, and by these presents *Doth* grant, bargain, sell, and release unto the said [*mortgagee*], and his heirs, (in the actual possession of the said [*mortgagee*] now being, by virtue of a bargain and sale for a year to him thereof made by the said [*mortgagor*], by indenture, bearing date the day next before the day of the date of these presents, and by force of the statute made for transferring uses into possession), ALL THAT messuage or dwelling-house situate and being &c., and now in the tenure or occupation of ——, and ALL THAT piece or parcel of land thereunto adjoining, and containing by estimation, &c.; *And all* [houses, outhouses, edifices, buildings, cellars, vaults, areas, courts, court-yards, wood-houses, pumps, cisterns, gardens, ways, paths, passages, trees, woods, underwoods, commons, hedges, ditches, fences, waters, water-courses, rights, liberties, privileges, easements, profits, commodities, advantages, and] appurtenances whatsoever to the messuage or dwelling-house, piece or parcel of land, hereditaments, and premises hereby released or otherwise assured, or intended so to be, or any of them respectively belonging or in anywise appertaining, or accepted, reputed, deemed, taken or known, held, used, occupied, possessed, or enjoyed, as part, parcel, or member of the same, or any of them respectively; And all the estate, right, title, interest, use, trust, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of the said [*mortgagor*], in, to, and upon the said messuage or dwelling-house, piece or parcel of land, hereditaments, and premises; *And* all deeds, evidences, and writings, relating to the said hereditaments and premises, or any part thereof, now in the custody of the said [*mortgagor*], or which he can procure without suit: To HAVE AND TO HOLD the said messuage or dwelling-house, piece or parcel of land, hereditaments, and all and singular other the premises hereby released or otherwise assured, or intended so to be, with their and every of their appurtenances, unto the said [*mortgagee*] and his heirs, To THE USE of the said [*mortgagee*], his heirs and assigns, for ever, subject, nevertheless, to the proviso or agreement

20. TO RAISE MONEY TO PAY DEBTS OF DEVISOR.

Second *testatum*.

Mortgagor releases to mortgagee.

Parcels.

General words.

And all the estate.

And all deeds.

Habendum.

20. TO RAISE MONEY TO PAY DEBTS OF DEVISOR.

for redemption next hereinafter contained, (that is to say); (*add proviso for redemption, and covenants, ut ante*, Vol. 5, p. 564 *et seq.*)

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21. FEE-FARM RENT TO SEVERAL MORTGAGEES ADVANCING IN CERTAIN SHARES.

21. MORTGAGE *by* APPOINTMENT *and* GRANT *of a* FEE-FARM-RENT, *to* SEVERAL MORTGAGEES, *with usual Covenants.* DECLARATION *that* MORTGAGEES *have* ADVANCED *their* MONEY *in* CERTAIN PROPORTIONS (*a*). (*Variation where the* PRINCIPAL *is to be repaid by* INSTALMENTS).

Parties.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—, BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagees*], of &c., of the other part.

Recital of deed creating the fee-farm-rent.

WHEREAS, by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, in the year 1760, the release being made between [A. B.],

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Modes of proceeding where money is advanced by several.

(*a*) Where several persons contribute to advance money on the same estate, intending that none of them shall acquire any relative priority, the two most usual modes of effecting this object are either to limit to each an aliquot share of the estate, proportioned to his share of the money, (as in the next precedent), or for a mortgage of the entire estate to be made to both or all the lenders as joint tenants, or to a trustee for them, (such trustee being either one of the persons advancing the money, or, which is preferable, a stranger), with a declaration (*ut post*), that the mortgage-money is advanced by the several persons in question, in certain proportions; and this, it is obvious, is the only method where (as in the precedent *supra*) the sums advanced are not easily reducible into aliquot shares, as moieties, thirds, twelfths, &c. The two modes of mortgaging which have been suggested are attended with different consequences in several important particulars. In the first case, the deed operates as two distinct mortgages, and a bill for foreclosure would, it is conceived, lie by either party in respect of his share in the estate; in the latter case, however, it has been decided that a suit cannot be maintained by any one or more of the persons entitled to a proportion of the money, for a foreclosure of a proportional part of the estate, but all the persons entitled to the money must be before the court. (*Palmer* v. *Earl of Carlisle*, 1 Sim. & S. 423.)

It should be observed, that the Stamp Act, 55 Geo. 3, c. 184, *ante*, Vol. 5, p. 521, imposes several stamps where the mortgage is made to secure the payment to different persons of distinct sums of money, and not one stamp upon the aggregate amount.

esquire, of the first part; [C. D.], gent., of the second part; [E. F.], spinster, of the third part; and [G. H.], gent., of the fourth part; ALL THAT messuage &c., with the appurtenances, were conveyed and assured *To the use, intent, and purpose*, that the said [C. D.], his heirs and assigns, for ever, should receive and take the yearly rent or sum of £—— to be issuing and payable out of the hereditaments and premises thereby assured; such rent to be paid on the feast-day of St. Michael the Archangel, in each and every year; with such power of distress and entry, limited by way of use, in case the same rent should be behind and unpaid for the space of thirty days after any or either of the said annual days of payment, as are contained in the said indenture of release: AND WHEREAS, by divers assurances or other means effectual in the law, the said yearly fee-farm-rent became vested in [A. Z.], gent., as the absolute owner thereof in fee-simple; AND WHEREAS, by an indenture of grant, bearing date on or about the —— day of —— 1820, and made between the said [A. Z.], of the first part, the said [*mortgagor*], of the second part, and [*his trustee*], of the third part, the said yearly fee-farm-rent and all powers and remedies for the recovery of the same, were conveyed and assured, and now stand limited to such uses, for such estate or estates, and charged and chargeable in such manner and form as the said [*mortgagor*], by any deed or deeds in writing, with or without power of revocation, duly executed, should from time to time direct or appoint, and in default of any such direction or appointment, *To the use* of the said [*mortgagor*], and his assigns, for his life, with remainder *To the use* of the said [*trustee*], and his heirs, during the natural life of the said [*mortgagor*], in trust, nevertheless, for the said [*mortgagor*], and his assigns, with remainder *To the use* of the said [*mortgagor*], his heirs and assigns, for ever. AND WHEREAS, the said [*mortgagor*], being desirous to borrow and take up at interest the sum of five hundred pounds, hath applied to and requested the said [*mortgagees*] to lend and advance the same to him, at interest, on the security of the yearly fee-farm-rent hereinbefore mentioned, which they the said [*mortgagees*] have consented and agreed to do (*b*). NOW

21. FEE-FARM-RENT TO SEVERAL MORTGAGEES ADVANCING IN CERTAIN SHARES.

That by divers assurances rent became vested in A. Z.;

—of conveyance to mortgagor;

—of agreement for loan.

Testatum.

(*b*) Where a person seised in fee of lands grants a rent-charge out of them *de novo* for the purpose of raising money by mortgage, the present

Distinction where the mort-

21. FEE-FARM-RENT TO SEVERAL MORTGAGEES ADVANCING IN CERTAIN SHARES.

Mortgagor, in consideration, &c.,

THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of five hundred pounds of lawful British money, advanced and paid by the said [*mortgagees*] to the said [*mortgagor*], at or immediately before the execution of these presents, (the receipt of which said sum of five hundred pounds he the said [*mortgagor*] doth hereby acknowledge, and from the same doth acquit, release, and discharge the said [*mortgagees*], their heirs, executors, administrators, and assigns), he the said [*mortgagor*], by virtue and in execution of the power or authority limited and reserved to him in and by the hereinbefore in part recited indenture of release, and also of every other power or authority enabling him in this behalf, *Doth* hereby absolutely and irrevocably direct, limit, and appoint, that *All that* the said yearly fee-farm-rent, or annual sum of £——, so as aforesaid created and limited by and in the hereinbefore in part recited indentures of lease and release, of or about the —— and —— days of ——, 1760, together with all powers and remedies, by distress, re-entry, or otherwise for the recovery of the same or any part thereof, shall remain, continue, and be, and that the hereinbefore in part recited indenture of release of the —— day of ——, 1820, shall henceforth operate and enure, To THE ONLY PROPER USE of the said [*mortgagees*], their heirs and assigns, for ever, subject, nevertheless, to the proviso or agreement for redemption hereinafter contained. AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations hereinbefore expressed, he the said [*mortgagor*] *Hath* granted, bargained, sold, and confirmed, and by these presents *Doth* grant, &c., unto the said [*mortgagees*] and their heirs (*c*), ALL THAT the said yearly fee-farm-rent or annual sum of £—— hereinbefore appointed or otherwise assured,

appoints the fee-farm-rent.

To the use of mortgagees in fee, subject to proviso for redemption.

Second *testatum*.

Mortgagor releases to mortgagee the rent,

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gagee takes an original rent-charge.

deed should be varied, by reciting the seisin of the ancestor, and the intention to grant a rent-charge to the mortgagee, &c. The *testatum* will be similar to that given *ante*, Vol. 4, p. 229, 2nd ed., with due variations adapted to the different nature and object of the instrument. The proviso for redemption, and the covenants by the mortgagor, that he stands seised, has power to charge the lands, for quiet enjoyment after default, and for further assurance, will be in the ordinary terms. See some remarks upon mortgages of rent-charges, *ante*, Vol. 5, p. 233.

(*c*) The rent being an incorporeal hereditament, no lease for a year is necessary.

or intended so to be, and all powers and remedies hereinbefore mentioned for the recovery of the same: *And all* the estate, right, title, interest, use, trust, inheritance, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of him the said [*mortgagor*], in, to, out of, or upon the yearly fee-farm-rent, or annual sum and premises hereby appointed and granted or otherwise assured, or intended so to be; *Together with all* deeds, evidences, writings, and muniments of title, and attested or other copies of deeds, evidences, and writings relating to or in anywise concerning the yearly fee-farm-rent or annual sum and premises hereby appointed and granted, or intended so to be, now in the custody or power of the said [*mortgagor*]: To HAVE AND TO HOLD, receive, perceive, take, and enjoy the said yearly fee-farm-rent, or annual sum of £——, and all and singular other the premises hereby appointed and granted and confirmed or otherwise assured, or intended so to be, unto the said [*mortgagees*] and their heirs, *To the only proper* use of the said [*mortgagees*], their heirs and assigns, for ever, *subject nevertheless* to the proviso or agreement for redemption hereinafter contained, (that is to say), PROVIDED ALWAYS, and it is hereby declared and agreed by and between the parties hereto, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, do and shall well and truly pay or cause to be paid unto the said [*mortgagees*], their executors, administrators, or assigns, at &c., the sum of £500 of lawful British money, with interest for the same after the rate of 5*l.* for every 100*l.* by the year (*d*), upon

21. FEE-FARM-RENT TO SEVERAL MORTGAGEES ADVANCING IN CERTAIN SHARES.

All the estate, &c.,

together with deeds, &c.

Habendum.

To the use of mortgagees in fee.

Proviso for redemption.

(*d*) If the principal money is to be payable by instalments, vary the terms of the proviso as follows:—

"at the respective days or times, and in the manner following, (that is to say), the sum of £——, part of the said principal money, on the —— day of —— next ensuing the date of these presents; the sum of £——, other part of the said principal sum, on the —— day of ——, which will be in the year ——; and the sum of £——, the residue of the said principal sum of £——, on the —— day of ——, which will be in the year ——, with interest in the meantime after the rate aforesaid, on so much of the said principal sum of £—— as

Variation, where the principal money is to be repaid by instalments.

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the —— day of —— now next ensuing, without making any deduction or abatement whatsoever, [according to the condition of a certain bond or obligation of the said [*mortgagor*], bearing even date with these presents, given for securing the payment of the same sum and interest (*e*)], then these presents, and every article, matter, and thing herein contained, [and also the bond hereinbefore referred to], shall cease and be void to all intents and purposes whatsoever, any thing herein [or in the said bond] contained to the contrary thereof in anywise notwithstanding (*f*). AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagees*], their executors, administrators, and assigns, that he the said [*mortgagor*], his heirs, executors, or administrators, will pay or cause to be paid unto the said [*mortgagees*], their executors, administrators, or assigns, the said principal sum of £500, and the interest thereon, at the time (*g*) and in the manner hereinbefore appointed for payment of the same, without any deduction or abatement whatsoever. AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, further covenant and agree with the said [*mortgagees*], their heirs and assigns (*h*), in manner following; that the power of

Covenant by mortgagor to pay mortgage-money.

Covenants by mortgagor;

that power is valid and subsisting;

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shall from time to time remain unpaid, such interest to be payable by even portions half-yearly, on the —— day of ——, and the —— day of ——, in every year, without making any deduction," &c.

(*e*) But, as to mortgage bonds, *vide ante*, Vol. 5, p. 515.

Variations.

(*f*) If a power of sale is to be added, proceed as in the precedent *ante*, Vol. 5, p. 560; varying, of course, the expressions descriptive of the property. The present covenants will be applicable, with the addition of the provisions introduced where the mortgage is accompanied by a power of sale.

(*g*) If by instalments, *ut ante*, p. 35.

"at the several days and times."

(*h*) As the covenants for title are intended to run with the land*, they ought in a mortgage in fee to be made with the mortgagee (supposing him to be the releasee or grantee, as well as the *cestui que use*) and his *heirs*, and not, as the covenant to pay the mortgage-money, (which is a personal covenant only, *Canham* v. *Rust*, 2 J. B. Moore, 154), with him, his executors, or administrators.

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* As to covenants running with the land, *vide ante*, Vol. 4, p. 386, 2nd ed.

appointment hereinbefore in part recited and hereby exercised, or intended so to be, is a good, valid, and subsisting power, and has not been heretofore exercised, suspended, or in any manner prejudicially affected; *And also*, that he the said [*mortgagor*] now hath in himself good right and lawful and absolute authority by these presents to limit and appoint, and also to grant and confirm the said fee-farm-rent, or annual sum and premises hereby appointed, granted, and confirmed, or intended so to be, unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, according to the true intent and meaning of these presents; *And also* that it shall be lawful for the said [*mortgagees*], their heirs and assigns, from time to time, and at all times, after default shall be made in payment of the said sum of £—— and interest, or any part thereof respectively, contrary to the true intent and meaning of the proviso or agreement for redemption hereinbefore contained, peaceably and quietly to have, hold, possess, enjoy, receive, and take the fee-farm-rent or yearly sum of £—— and premises hereby appointed and granted, or intended so to be, and all arrears thereof then due and unreceived, and use and exercise all and singular the powers and remedies reserved or incident by law for the recovery thereof, without any hinderance, interruption, or denial whatsoever, of, from, or by the said [*mortgagor*], his heirs, executors, or administrators, or any other person or persons whomsoever; *And that* free and clear [and freely, clearly, and absolutely exonerated and discharged, or otherwise by him the said [*mortgagor*], his heirs, executors, or administrators, at his and their own costs and charges, sufficiently protected, defended, saved harmless, and kept indemnified] of and from all and all manner of former and other [gifts, grants, mortgages, bargains, sales, jointures, dowers, right and title of dower, uses, trusts, wills, entails, issues, statutes, recognizances, judgments, executions, extents, suits, decrees, debts of record, debts to the Queen's Majesty or any of her predecessors, sequestrations], estates, titles, troubles, liens, charges, and incumbrances whatsoever; *And moreover*, that he the said [*mortgagor*] and his heirs, and every other person whosoever, lawfully or equitably and rightfully claiming or to claim any estate, right, title, charge, or interest, at law or in equity, or otherwise howsoever, in, to, out of, or upon the yearly fee-farm-rent, or annual sum and premises hereby

21. FEE-FARM-RENT TO SEVERAL MORTGAGEES ADVANCING IN CERTAIN SHARES.

that he hath power to appoint;

for quiet enjoyment after default,

free from incumbrances;

for further assurance.

21. FEE-FARM-RENT TO SEVERAL MORTGAGEES ADVANCING IN CERTAIN SHARES.

appointed and granted, or intended so to be, or any part thereof, shall and will, from time to time and at all times hereafter, upon every request of the said [*mortgagees*], or either of them, or the heirs, executors, administrators, and assigns of them or either of them, but at the costs and charges of the said [*mortgagor*], his heirs, executors, or administrators, until the right or equity of redemption in the said hereditaments shall by foreclosure or otherwise be barred, and thenceforth at the costs and charges of the said [*mortgagees*], their heirs or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all such further and other acts, deeds, conveyances, and assurances in the law whatsoever, for more effectually appointing, granting, confirming, or otherwise assuring the yearly fee-farm-rent, or annual sum and premises hereby appointed and granted, or intended so to be, unto and to the use of the said [*mortgagees*], their heirs and assigns, for ever, in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*mortgagees*], or either of them, or the heirs, executors, administrators, or assigns of them or either of them, or their or his counsel in the law, shall be reasonably advised or required; PROVIDED ALWAYS, and it is hereby declared and agreed, and the said [*mortgagees*] do hereby consent and agree, that, until default shall happen to be made in payment of the said sum of 500*l.*, and the interest thereon, or of some part thereof, contrary to the true intent and meaning of the proviso or agreement for redemption hereinbefore contained, it shall be lawful for the said [*mortgagor*], his heirs and assigns, henceforth to hold and enjoy, and receive and take, the yearly fee-farm-rent or annual sum hereby appointed and granted, or intended so to be, to and for his and their own use (*i*), without any hinderance, interruption, or denial whatsoever from or by the said [*mortgagees*], their heirs or assigns, or from or by any other person or persons whomsoever, lawfully claiming through, under, or in trust for them or either of them, any thing hereinbefore contained to the contrary thereof notwithstanding; AND THIS INDENTURE FURTHER WITNESSETH, that it is hereby declared by the said [*first mortgagee*] and [*second mortgagee*]

Proviso that mortgagor shall enjoy until default.

Third *testatum*.

Declaration by mortgagees that

(*i*) As to accounts between mortgagor and mortgagee, see *ante*, Vol. 5, pp. 358, 388, 399.

21. FEE-FARM-RENT TO SEVERAL MORTGAGEES ADVANCING IN CERTAIN SHARES.

that the said sum of £500 so lent and advanced by them to the said [*mortgagor*] as hereinbefore expressed, has been lent and advanced by them out of their own respective proper monies, in the several shares and proportions and in the manner following, (that is to say), the sum of £360, part thereof, by the said [*first mortgagee*] (*k*), and the sum of £140, the residue thereof, by the said [*second mortgagee*]; and that the said [*mortgagees*] and their respective executors, administrators, and assigns, shall henceforth separately and distinctly be equitably and beneficially interested in and entitled to the said sum of £500 and the interest thereon hereby intended to be secured, and in and to the security hereby made, [and the said recited bond], and all other securities to be made or entered into for better or more effectually securing the payment of the same sum and interest, or any part thereof respectively, in the several parts, shares, and proportions aforesaid. IN WITNESS &c.

monies are advanced by them in certain proportions.

(*k*) If there are three, add—

"the sum of £——, a further part thereof, by the said [*second mortgagee*], and the sum of £——, the residue thereof, by the said [*third mortgagee*]."

Variation where there are three mortgagees.

22. MORTGAGE *in Fee to two Mortgagees* ADVANCING *the* MONEY *in* EQUAL PROPORTIONS (*a*), *the Estate being limited to them in* UNDIVIDED MOIETIES. (*Variation where each Mortgagee takes a* TERM *in* ONE MOIETY *and the* FEE *in the* OTHER). *Mortgage-Money paid into the* BANK *of* ENGLAND *in the Name of the* ACCOUNTANT-GENERAL, *pursuant to an Order of the* COURT *of* CHANCERY.

22. TO MORTGAGEES IN MOIETIES: MONEY PAID BY ORDER OF CHANCERY.

THIS INDENTURE, made &c. BETWEEN [*mortgagor*], of &c., of the first part; [*first-named mortgagee*], of &c., of

Parties.

(*a*) This precedent, of course, may easily be adapted to the case of the money being advanced in unequal shares.

22. TO MORTGAGEES IN MOIETIES: MONEY PAID BY ORDER OF CHANCERY.

the second part; and [*secondly-named mortgagee*], of &c., of the third part. (*Recite proceedings in Chancery in a certain cause, and order of the Court for the payment of the mortgage-money into the Bank of England*). AND WHEREAS, in obedience to the hereinbefore recited order, the said [*mortgagees*] have this day paid into the Bank of England, in the name and with the privity of the Accountant-General of the said court, in trust in the said cause, the sum of thirty thousand pounds of lawful British money, as appears by the receipt of [*A. B.*], one of the cashiers of the said Bank of England, dated this —— day of ——, and by the certificate of the said Accountant-General annexed to the said receipt; which said receipt and certificate have been duly filed in the register office of the said court, of which said sum of thirty thousand pounds, fifteen thousand pounds, part thereof, was the proper money of the said [*first-named mortgagee*], and fifteen thousand pounds, the remaining part of the said sum, was the proper money of the said [*secondly-named mortgagee*], as they respectively hereby declare and acknowledge.

Recital of payment of mortgage-money into the Bank, pursuant to an order of Court.

Testatum. NOW THIS INDENTURE WITNESSETH, that, for and in consideration of the said several sums of fifteen thousand pounds and fifteen thousand pounds, (making together the sum of thirty thousand pounds), so by the said [*mortgagees*] respectively paid into the Bank of England as hereinbefore is mentioned, the payment of which said sums of fifteen thousand pounds and fifteen thousand pounds (making together the said sum of thirty thousand pounds) the said [*mortgagor*] doth hereby acknowledge, and from the same sums of fifteen thousand pounds and fifteen thousand pounds respectively, and every part thereof respectively, the said [*mortgagor*] doth acquit, exonerate, release, and discharge the said [*mortgagees*], and each of them, their and each of their heirs, executors, administrators, and assigns; And also for and in consideration of the sum of ten shillings of like lawful money paid by the said [*mortgagees*] to the said [*mortgagor*], at or immediately before the sealing and delivery of these presents, the receipt &c., he the said [*mortgagor*] *Hath* granted, bargained, sold, and released, and by these presents *Doth* &c., unto the said [*mortgagees*], (in their actual possession, &c.), and to their heirs, (*parcels and general words*), TO HAVE AND TO HOLD the said —— and other the hereditaments and premises hereinbefore described and hereby released, or intended

In consideration of mortgage-money advanced by mortgagees in equal proportions—

Mortgagor releases to mortgagees;

Habendum,

so to be, unto the said [*mortgagees*] and their heirs, to the uses, and subject to the provisoes and agreements hereinafter expressed concerning the same, (that is to say), As to one undivided moiety or half part or share (the whole into two equal half parts or shares being divided) of and in the hereditaments intended to be hereby released, and the appurtenances thereunto belonging, TO THE ONLY PROPER USE of the said [*first-named mortgagee*], his heirs and assigns, for ever; *but subject* to the proviso or agreement hereinafter contained for the redemption of the said undivided moiety or equal half part or share; AND as to the other undivided moiety or equal half part or share, (the whole being divided as aforesaid), of and in the hereditaments intended to be hereby released, and the appurtenances thereunto belonging, TO THE ONLY PROPER USE of the said [*secondly-named mortgagee*], his heirs and assigns, for ever; *but subject* to the proviso or agreement hereinafter contained for the redemption of the last-mentioned undivided moiety or equal half part (*b*). PROVIDED ALWAYS,

22. TO MORTGAGEES IN MOIETIES: MONEY PAID BY ORDER OF CHANCERY.

As to one moiety to the use of first-named mortgagee;

As to the other moiety, to the use of the secondly-named mortgagee.

(*b*) It is obvious, that, under the mortgage in the text, the mortgagor might redeem one moiety without the other, by which means the security for the remaining moiety would be of less value. In order to prevent this consequence, and to give to the respective mortgagees a charge upon the entire estate, some gentlemen are in the habit of limiting to each mortgagee an immediate term in one moiety, and the remainder in fee in the other. See Coote on Mortgages, pp. 128, 722, 2nd ed. If this scheme be adopted, the limitation of the use, after the *habendum* in fee, will be as follows:—

Variation, where each mortgagee takes a term in one moiety, and a fee in the other.

"As to one undivided moiety or half part of the hereditaments hereby released or intended so to be, TO THE USE of the said [*first mortgagee*], his executors, administrators, and assigns, for the term of one thousand years hence next ensuing and fully to be complete and ended, without impeachment of waste; *And* after the expiration or sooner determination of the said term, TO THE USE of the said [*second mortgagee*], his heirs, and assigns, for ever; AND as to the other undivided moiety or half part of the hereditaments hereby released, or intended so to be, TO THE USE of the said [*second mortgagee*], his executors, administrators, and assigns, for the term of one thousand years thence next ensuing and fully to be complete and ended, without impeachment of waste: And after the expiration or sooner determination of the term of one thousand years

22. TO MORTGAGEES IN MOIETIES: MONEY PAID BY ORDER OF CHANCERY.

and it is hereby agreed and declared between and by the said parties to these presents, that, if the said [*mortgagor*], his heirs, executors, or administrators, shall and do, on the —— day of —— next, pay or cause to be paid unto the

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lastly hereinbefore limited, To THE USE of the said [*first mortgagee*], his heirs and assigns, for ever; PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties to these presents, that, if the said [*mortgagor*], his heirs, executors, or administrators, shall, on the —— day of —— next, pay unto the said [*first mortgagee*], his executors, administrators, or assigns, the sum of £—— of &c., with interest for the same &c., at &c., then he the said [*first mortgagee*], his heirs, executors, administrators, or assigns, will, on the request and at the costs and charges of the said [*mortgagor*], his heirs or assigns, assign, surrender, convey, and assure as well the term of one thousand years hereinbefore limited unto the said [*first mortgagee*], his executors, administrators, and assigns, of and in the first-mentioned moiety of the hereditaments hereby released, or intended so to be, as also the freehold and inheritance of and in the last-mentioned moiety thereof, hereinbefore limited to the said [*first mortgagee*], his heirs and assigns, subject to the term of one thousand years hereinafter mentioned, unto the said [*mortgagor*], his heirs and assigns, or as he or they shall direct: PROVIDED ALSO, and it is hereby further declared, &c., that if the said [*mortgagor*], his heirs, executors, or administrators, shall pay unto the said [*second mortgagee*], his executors, administrators, or assigns, the sum of £—— of &c., with interest, &c., at &c., then he the said [*second mortgagee*], his heirs, &c., will, on the request, &c., convey, surrender, and assure as well the freehold and inheritance hereinbefore limited unto the said [*second mortgagee*], his heirs and assigns, of and in the first-mentioned moiety or half part of the hereditaments hereby released, or intended so to be, subject to the term hereinbefore limited to the said [*first mortgagee*], his executors, administrators, and assigns, in the same moiety, as also the term of one thousand years hereinbefore limited to him the said [*second mortgagee*], his executors, administrators, and assigns, of and in the lastly hereinbefore mentioned moiety or half part of the same

Proviso for redemption as to one moiety.

Proviso for redemption as to the other moiety.

22. TO MORTGAGEES IN MOIETIES: MONEY PAID BY ORDER OF CHANCERY.

said [*first-named mortgagee*], his executors, administrators, or assigns, the sum of fifteen thousand pounds of lawful British money, with interest thereon at the rate of five pounds *per centum per annum* from the date of these presents, without any deduction or abatement whatever, then and in such case, and immediately thereupon, the said [*first-named mortgagee*], his heirs or assigns, shall and will, on the request in writing, and at the costs and charges, of the said [*mortgagor*], his heirs, executors, administrators, or assigns, reconvey and assure the undivided moiety or equal half part hereinbefore limited to the use of the said [*first-named mortgagee*], his heirs and assigns, of and in the —— and hereditaments hereby intended to be released, unto and to the use of the said [*mortgagor*], his heirs and assigns, for ever, or in such other manner as he or they shall direct, free from all charges and incumbrances to be made or executed by the said [*first-named mortgagee*], his heirs or assigns, in the mean time. (*Similar proviso as to the other mortgagee. Add covenants with first-named mortgagee to pay* 15,000*l.* *and interest, and for title, quiet enjoyment, and further assurance as to one moiety; and similar covenants with secondly-named mortgagee. The covenants for title, &c., however, may be with both in one clause, in which case the habendum, as well as the limitation of the use, should be to them as tenants in common*).

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hereditaments, unto &c. (*Covenants by mortgagor with each mortgagee to pay his share of mortgage-money, and that he has a right to limit one moiety for the term of one thousand years, ut ante,* Vol. 5, p. 545, *and the other moiety in fee, &c.**)"

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* In the present case, as each mortgagee takes a chattel interest in one moiety, and a fee in the other, two sets of covenants for the respective moieties should be entered into, the one adapted to a mortgage by demise, *ut ante*, Vol. 5, p. 545; the other to a mortgage in fee, *ut ante*, Vol. 5, p. 555. For the sake of brevity, however, the several covenants may be blended together, and the covenant will then be with the mortgagee, his *heirs*, *executors*, *administrators*, and *assigns*, which the courts would construe distributively, namely, that, as to so much of the covenants as related to the term, it was a covenant with the mortgagee, his executors and administrators, and, as to so much as related to the fee, with him and his heirs.

23. REVERSION IN FEE TO A TRUSTEE FOR SALE.

23. CONVEYANCE *by way of* MORTGAGE *of a Reversion in Fee in certain Manors, &c., to a* TRUSTEE (*a*) *for Mortgagee, to secure* 5000*l. and Interest, and if not paid according to the Proviso for Redemption, upon* TRUST *to* SELL *the Estate and pay the Mortgage-Money and Interest.*

Parties.

THIS INDENTURE, &c., BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagee*], of &c., of the second part; and [*trustee*], of &c. of the third part:

Recital that mortgagor is entitled:

WHEREAS the said [*mortgagor*] is absolutely entitled to the manor, messuages, lands, and hereditaments hereinafter mentioned and expressed to be hereby granted and released, for an estate of inheritance in fee-simple in reversion, expectant upon the decease of [*tenant for life*], free from all incumbrances;

Agreement for loan.

AND WHEREAS the said [*mortgagor*] hath applied to and requested the said [*mortgagee*] to advance and lend to him the sum of £5000, which the said [*mortgagee*] hath agreed to do, upon having the repayment thereof with interest secured in manner hereinafter mentioned:

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £5000 of lawful British money to the said [*mortgagor*] in hand paid by the said [*mortgagee*], at or immediately before the execution of these presents, the receipt of which said sum the said [*mortgagor*] doth hereby acknowledge, and from the same and every part thereof doth release and discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns; *And also,* in consideration of the sum of five shillings of like lawful money, to the said [*mortgagor*] at the same time paid by the said [*trustee*], the receipt whereof is hereby acknowledged, he the said [*mortgagor*], at the request and upon the nomination of the said [*mortgagee*], (testified by his executing these presents), *hath* granted, bargained, sold, released, and

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(*a*) As to vesting a power of sale in a trustee, see *ante*, Vol. 5, pp. 104, 411, and 502.

confirmed, and by these presents *doth* &c. unto the said [*trustee*] (in his actual (*b*) possession, &c.), and to his heirs, ALL THAT AND THOSE manor or lordship and capital mansion-house, park, messuages, farm, lands, tithes, rents, tenements, and other hereditaments, situate, lying, and being, or arising, in the parish of ——, in the county of ——, of or belonging to the said [*mortgagor*], called &c., (subject to the life estate of the said [*tenant for life*] therein), together with all and singular courts-leet, courts-baron, view of frank-pledge, reliefs, heriots, fines, amerciaments, sums of money, goods and chattels of felons, fugitives, felons of themselves, and outlawed persons, deodands, estrays, chief-rents, quit-rents, rent-charges, rents-seck, rents of assize, fee-farm-rents, boons, services, royalties, jurisdictions, franchises; and also all out-houses, edifices, buildings, ways, waters, water-courses, trees, woods, underwoods, hedges, ditches, fences, commons, rights, profits, privileges, easements, advantages, emoluments, and appurtenances, to the said manor or other hereditaments belonging or appertaining, or therewith used or enjoyed; And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the said hereditaments and premises; and all the estate, right, title, interest, property, possibility, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in, to, out of, and upon the said manor, lands, tenements, hereditaments, and premises, and every part thereof; TO HAVE AND TO HOLD the said manor, messuages, farms, lands, tenements, hereditaments, and all and singular the premises expressed to be hereby granted and released, with their appurtenances, (subject, nevertheless, and without prejudice to the estate for life therein of the said [*tenant for life*]), unto the said [*trustee*], and his heirs, for ever, TO THE USE of the said [*trustee*], his heirs, and assigns for ever: *Upon the trusts*, nevertheless, and for the intents and purposes hereinafter expressed concerning the same, (that is to say), *Upon trust* that, in case default shall happen to be made in payment of the said sum of £5000 or some part thereof, or the interest thereon, at or upon the day or time appointed for the payment of the same in

23. REVERSION IN FEE TO A TRUSTEE FOR SALE.

Parcels.

General words applicable to a manor, &c.

Habendum,

subject to estate for life,

To the use of the trustee;

Upon trust for sale.

(*b*) As to the practice of conveying reversions by lease and release, *vide ante*, Vol. 4, p. 232, 2nd ed.

23. REVERSION IN FEE TO A TRUSTEE FOR SALE.

and by the proviso hereinafter contained (*c*) contrary to the true intent and meaning of these presents, he the said [*trustee*], his heirs or assigns, shall and do at any time or times thereafter, either in the lifetime or after the decease of the said [*tenant for life*], at the request of the said [*mortgagee*], his executors, administrators, or assigns, but without any further or other authority from or by the said [*mortgagor*], his heirs or assigns, make sale and absolutely dispose of the manor, lands, tenements, hereditaments, and premises hereinbefore expressed to be hereby granted and released, or any of them, or any part or parcel thereof, and subject to the life estate therein of the said [*tenant for life*], if then living, either together or in parcels, and by public sale or auction, or by private contract, unto any person or persons who shall be willing to become the purchaser or purchasers, and under and subject to such special or other conditions and stipulations as the said [*trustee*], his heirs or assigns, shall or may deem expedient; with liberty, at his or their discretion, to purchase in the said hereditaments, or any part thereof, at any auction or auctions, without being responsible for any loss occasioned thereby; and also to vary the terms of or rescind any contract for sale that shall or may have been entered into; And shall and do make, and execute all such conveyances and assurances in the law as shall be requisite to effectuate and complete such sale or sales as aforesaid; *And upon further trust*, that he the said [*trustee*], his heirs or assigns, shall and do, out of the monies to arise from such sale or sales as aforesaid, and the rents and profits which shall have been received by him or them, after the said hereditaments shall have become saleable under the trust aforesaid, and he and they shall have been required by the said [*mortgagee*], his executors, administrators, or assigns, to enter into the receipt thereof, (and which he or they shall be at liberty to do, whether he or they shall afterwards proceed to a sale of the said hereditaments or not), in the first place pay and satisfy the costs and expenses which he the said [*trustee*], his heirs or assigns, shall pay or incur in the execution of the trusts hereby in

Application of purchase-money.

(*c*) In this precedent, it will be observed, the proviso for redemption follows instead of (as is usual, and seems preferable) preceding the trust for sale.

him and them reposed; And in the next place shall and do pay unto the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of £5000 and the interest thereon, or so much of the said principal sum and interest as shall then remain unpaid; And after full payment and satisfaction of the said sum of £5000 and interest, and all such costs and expenses as aforesaid, shall and do pay the surplus, if any, of the monies to arise by such sale or sales, and such rents and profits as aforesaid, unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, for his and their own use and benefit; And, subject and without prejudice to the trusts aforesaid, *Upon trust* that the said [*trustee*], his heirs and assigns, shall and do stand seised of and interested in the manor and other hereditaments expressed to be hereby granted and released, and the rents and profits thereof which shall accrue after the determination of the estate for life of the said [*tenant for life*] therein, or so much and such part and parts of the said manor and other hereditaments, rents, issues, and profits, as shall remain unsold and undisposed of for the purposes aforesaid, *In trust* for the said [*mortgagor*], his heirs and assigns; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that, if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do well and truly pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, at or in the common Dining Hall of Lincoln's Inn, the sum of £5000 of lawful British money, on the —— day of —— now next ensuing, with interest for the same in the meantime after the rate of five pounds for every one hundred pounds by the year, without any deduction or abatement whatsoever, Then, at any time after such payment shall be made, he the said [*trustee*], his heirs or assigns, shall and will, at the request, costs, and charges of the said [*mortgagor*], his heirs or assigns, release and convey all and singular the manor, messuages, lands, tenements, and hereditaments hereinbefore expressed to be hereby granted and released, with their appurtenances, unto and to the use of the said [*mortgagor*], his heirs and assigns, or as he or they shall direct or appoint, (subject to the life estate therein of the said [*tenant for life*], if he shall be then living), but free from all incumbrances whatsoever made, done, executed, or committed by the said

23. REVERSION IN FEE TO A TRUSTEE FOR SALE.

Subject to previous trusts, trustee to hold in trust for mortgagee.

Proviso for redemption.

23. REVERSION IN FEE TO A TRUSTEE FOR SALE.

[*trustee*], his heirs or assigns; PROVIDED ALSO, and it is hereby further agreed and declared between and by the said parties to these presents, that every receipt of the said [*trustee*], his heirs or assigns, for the purchase-money of the hereditaments so to be sold as aforesaid, or of the rents and profits thereof so to be received as aforesaid, shall be a good and effectual discharge to the person or persons paying the same; and that the person or persons taking such receipt as aforesaid shall not be afterwards bound or obliged to see to the application, or be in anywise answerable or accountable for the loss, misapplication, or non-application of the monies therein acknowledged to be received; nor shall any purchaser or purchasers of the said hereditaments, or any part thereof, or the person or persons paying the rents and profits thereof as aforesaid, be bound to inquire into the necessity or propriety of any such sale or sales, or of the receipt of the said rents and profits as aforesaid.

Trustee's receipts to discharge purchasers, &c.

And the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors or administrators, that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will well and truly pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, at or in the common Dining Hall of Lincoln's Inn, the said sum of £5000 of lawful British money on the —— day of ——, now next ensuing, with interest for the same in the meantime after the rate of five pounds for every one hundred pounds by the year, without any deduction or abatement whatsoever; AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*trustee*], his heirs and assigns, and also separately with the said [*mortgagee*], his executors, administrators, and assigns, in manner following, (that is to say), That [he the said [*mortgagor*] now, at the time of the sealing and delivery of these presents, is lawfully, rightfully, and absolutely entitled to the manor and other hereditaments hereinbefore described and expressed to be hereby granted and released, for an estate of inheritance in fee-simple in reversion, (subject only to the estate for life therein of the said [*tenant for life*]), without any manner of condition, contingent proviso, trust, power of revocation, or limitation of any new or other use or uses, of any restraint, cause, matter, or thing, to alter, change,

Covenants by mortgagor,

that he is seised in fee.

charge, revoke, make void, lessen, incumber, or determine the same; *And that* (*d*)] he the said [*mortgagor*] now hath in himself good right, full power, and lawful and absolute authority to grant, bargain, sell, and release the manor and other hereditaments hereinbefore described and expressed to be hereby granted and released, with their appurtenances, unto and to the use of the said [*trustee*], his heirs and assigns, subject as and in manner aforesaid, according to the true intent and meaning of these presents: *And further*, that it shall be lawful for the said [*trustee*], his heirs and assigns, from time to time, and at all times after the decease of the said [*tenant for life*], peaceably and quietly to enter into and upon, and to have, hold, use, occupy, possess, and enjoy the said manor and other hereditaments, with their and every of their appurtenances, and to receive and take the rents and profits thereof, upon the trusts aforesaid, without any [lawful let, suit, trouble, denial, eviction, ejection,] interruption, or disturbance whatsoever, of, from, or by the said [*mortgagor*], his heirs, executors, or administrators, or of, from, or by any other person or persons whomsoever; *And that* free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or otherwise, by the said [*mortgagor*], his heirs, executors, or administrators, [well and sufficiently saved, defended, and] kept harmless and indemnified from and against all and all manner of [former and other gifts, grants, bargains, sales, mortgages, jointures, dower, right and title of dower, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, debts, legacies, annuities, sum and sums of money, rent, and arrears of rent, and from and against all and singular other estates, titles, troubles,] charges and incumbrances whatsoever, [had, made, done, committed, executed, or willingly or knowingly suffered by him the said [*mortgagor*], or by any other person or persons whomsoever]: *And further*, that he the said [*mortgagor*], and his heirs, and every other person having or lawfully claiming any estate, right, title, charge, or interest in, to, upon, or out of the manor and other hereditaments and premises expressed to be hereby granted and released, or any part thereof, shall and will, from time to time, and at all times hereafter, upon

23. REVERSION IN FEE TO A TRUSTEE FOR SALE.

and has good right to convey;

for quiet enjoyment after the decease of tenant for life,

free from incumbrances;

and for further assurance.

(*d*) For the sake of brevity, the covenant within brackets may be very properly omitted in a mortgage.

23. REVERSION IN FEE TO A TRUSTEE FOR SALE.

every reasonable request of the said [*trustee*], his heirs or assigns, or of the said [*mortgagee*], his executors, administrators, or assigns, and, until such sale or sales as aforesaid, at the expense of the said [*mortgagor*], his heirs or assigns, and thenceforth at the expense of the person or persons requiring the same, make, do, and execute, or cause and procure to be made, done, and executed all such further and other lawful acts, deeds, conveyances, and assurances in the law whatsoever, for the further and more effectually granting, releasing, and assuring the manor and other hereditaments and premises expressed to be hereby granted and released, with their appurtenances, subject to the estate for life therein of the said [*tenant for life*], if living, unto and to the use of the said [*trustee*], his heirs or assigns, or otherwise as he or they shall direct or appoint, as by the said [*trustee*], his heirs or assigns, or the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be advised or devised and required. (*If the houses or other buildings are deemed to be an essential part of the security, add covenant to insure against fire*). IN WITNESS &c.

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24. FURTHER CHARGE AFTER CONVEYANCE IN TRUST FOR SALE.

24. FURTHER CHARGE (*a*) *on Premises comprised in the preceding Security, and* DECLARATION *that the* TRUSTS FOR SALE, *&c., therein, may be* EXERCISED *for* RAISING *Money* SECURED *by the* FOLLOWING DEED.

Parties.

THIS INDENTURE, &c., BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagee*], of &c., of the second part; and [*trustee*], of &c., of the third part. WHEREAS, by indentures of lease and release, bearing date, &c. (*Recite the last deed fully, except the common covenants*).

Agreement for further advance,

AND WHEREAS the said [*mortgagee*], at the request of the

(*a*) In preparing deeds of further charge, it is, of course, material to consider whether the mortgagee has not already a charge on the estate, for the additional debt proposed to be secured. As to his right to tack which, *vide ante*, Vol. 5, p. 436.

said [*mortgagor*], hath agreed to advance to him the said [*mortgagor*] the further sum of two thousand pounds, at interest upon security of the manor and other hereditaments hereinbefore mentioned; and the said [*mortgagee*] hath this day paid unto the said [*mortgagor*] the sum of two thousand pounds sterling, the receipt whereof he doth hereby acknowledge. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of two thousand pounds of lawful British money so lent and paid by the said [*mortgagee*] to the said [*mortgagor*] as aforesaid, he the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*mortgagee*], his executors, administrators, and assigns, that he the said [*mortgagor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of two thousand pounds of lawful British money, on the —— day of —— next ensuing (*b*), with interest for the same after the rate of five pounds per centum per annum, computed from the date hereof, free from taxes and without any other deduction whatsoever; And for the more effectually securing the payment of the said sum of two thousand pounds and interest to the said [*mortgagee*], his executors, administrators, and assigns, he the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, further covenant, grant, and agree, to and with the said [*mortgagee*], his executors, administrators, and assigns, that all and singular the manor, messuages, and other hereditaments comprised in the above-recited indentures of lease and release, and thereby granted and conveyed to the said [*trustee*], his heirs and assigns, upon the trusts aforesaid, together with their appurtenances, shall henceforth stand and be charged and chargeable with, and remain, continue, and be a security to the said [*mortgagee*], his executors, administrators, and

24. FURTHER CHARGE AFTER CONVEYANCE IN TRUST FOR SALE.

and payment of the money.

Testatum.

Mortgagor covenants to pay the money;

and that lands shall be charged.

(*b*) This may be the same day as the one fixed for payment of the money secured by the original mortgage. If a *subsequent* day be named, it would be proper to add a declaration, that nothing in this deed should be construed to postpone or interfere with the trust for sale in the mortgage-deed, to prevent its being contended that the trust was not exerciseable until default had been made in payment of the monies secured by the *present* deed, as well as that of the original mortgage.

24. FURTHER CHARGE AFTER CONVEYANCE IN TRUST FOR SALE.

assigns, for payment of the said sum of two thousand pounds, and interest for the same after the rate aforesaid, at or upon the day or time hereinbefore mentioned for payment thereof, and that no part of the said manor and other hereditaments shall be redeemed or redeemable, until the said principal sum of two thousand pounds, and the interest thereof, shall be fully paid and satisfied unto the said [*mortgagee*], his executors, administrators, or assigns; *And it is hereby agreed and declared* between and by the said [*mortgagor*] and [*mortgagee*], that the trusts, powers, and provisoes, declared and contained in and by the said recited indenture of release, for the levying, raising, and paying the aforesaid sum of five thousand pounds and interest, shall be applicable to the levying, raising, and paying as well the said sum of two thousand pounds hereby secured, and the interest thereof, in case default shall be made in payment thereof, or of any part thereof, as the aforesaid principal sum of five thousand pounds and interest; and that the said [*trustee*], his heirs and assigns, shall henceforth accordingly stand seised of the aforesaid manor and other hereditaments, with the appurtenances, upon such trusts, and under such powers and provisoes, as shall be necessary for effecting the purpose aforesaid (*c*). IN WITNESS &c.

Declaration that trusts of recited deed shall extend to the sum hereby secured.

(*c*) Deeds of further charge are often indorsed on the original deed. (See a form of this nature, *post*). The advantage of this mode of preparing the instrument is, that it prevents the necessity of reciting the mortgage-deed and describing the parcels, and, where these are long, it is frequently adopted as a measure of economy.

25. MORTGAGE *by Two* TENANTS *in common for* LIFE, *by Demise for* NINETY-NINE YEARS *determinable with their respective Lives, for securing the payment of a Sum and Interest, by* INSTALMENTS. *(Variation, where the* WHOLE ESTATES *for* LIFE *are conveyed to the* MORTGAGEE: *also, where an* INSURANCE *is effected on the* LIFE *of one of the* MORTGAGORS, *as a collateral Security). (A very concise Form).*

25. BY TENANTS FOR LIFE, WITH LIFE INSURANCE.

THIS INDENTURE, made the —— day of ——, in the year of the Christian æra ——, BETWEEN [*mortgagors*], of &c., of the one part; and [*mortgagee*], of &c., of the other part: WITNESSETH, that, in consideration of the sum of 170*l.* of lawful British money to the said [*mortgagors*] in hand paid by the said [*mortgagee*] at or before the sealing and delivery of these presents, the receipt whereof they the said [*mortgagors*] do hereby severally acknowledge, and therefrom do severally discharge the said [*mortgagee*], his executors, administrators, and assigns, they the said [*mortgagors*], by way of bargain and sale, taking effect by force of the statute for transferring uses into possession (*a*), *Do*, and each of them *Doth*, by these presents, grant, bargain, sell, and demise, unto the said [*mortgagee*], his executors, administrators, and assigns, *All that* messuage, late of [*testator*], late of ——, farmer, deceased, and late in his occupation, situate in —— aforesaid, (which said messuage was, by the will of the said [*testator*], dated the —— day of ——, devised to [*A. B.*], the father of the said [*mortgagors*], during his life, and, after his decease, unto the said [*mortgagors*], equally, during their

Testatum.

(*a*) As to these words, *vide ante*, Vol. 5, p. 544, n. The advantage in this instance of making the mortgage by way of demise for a term determinable with the lives, instead of for the whole duration of such lives, is, that the assurance requires a single deed only, the necessity of a lease for a year being avoided. If the conveyance is to include the *whole* life estates of the mortgagors, the variations will be as follow:—

"*Do*, and each of them *Doth*, by these presents, grant, bargain, sell, and release, unto the said [*mortgagee*], his executors, administrators, and assigns, (in the actual possession, &c., *ut ante*, Vol. 5, p. 563).

Variation, where mortgage is of the whole estates.

25. BY TENANTS FOR LIFE, WITH LIFE INSURANCE.

respective lives, and with remainder to their respective children, in manner in the said will mentioned, which state and interest of the father of the said [*mortgagors*] in the said messuage, under the said will, determined by his decease on the —— day of —— last): *And* all outhouses and other buildings, yards, passages, ways, easements, and appurtenances whatsoever, to the said messuage belonging; *And* the reversion and reversions, remainder and remainders thereof (*b*); *And also* all deeds and muniments of title relating to the said premises, now in the custody of the said [*mortgagors*], or either of them, or which they or he can procure without suit (*c*): To HAVE AND TO HOLD the said hereditaments and premises, with their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns (*d*), *from the day next before the day of the date of these presents, for and during the term of ninety-nine years thence next ensuing, or for so much of the said term as the estate or interest of the said* [*mortgagors*] *respectively, or either of them, in the said hereditaments and premises respectively, shall endure.* *Provided* that if the said [*mortgagors*], or either of them, their, or either of their executors, administrators, or assigns, shall pay unto the said [*mortgagee*], his executors, administrators, or assigns, the

General words.

Habendum.

Proviso for redemption.

Variation, where mortgage is of the whole estates.

(*b*) "And all the estate, right, title, interest, property, possession, claim, and demand whatsoever, of them the said [*mortgagors*] respectively, in, to, and upon the said messuage and premises."

Mortgage by demise should contain a grant of deeds.

(*c*) A grant of title-deeds should never be omitted in a mortgage, particularly where the mortgage is for a term only, by an owner in fee; for a termor, however long his term may be, is not, in respect of his interest, entitled to the custody of the deeds, which properly go with the freehold. *Harper* v. *Faulder*, 4 Madd. 129; *vide ante*, Vol. 5, p. 475.

Importance of mortgagee's obtaining possession of deeds.

But no prudent mortgagee will be satisfied with a mere grant of the deeds; he will take care that they are actually placed in his possession, unless a satisfactory reason is given for their non-production; as, that the mortgagor has a partial interest only in the estate, and the deeds are in the hands of the other owners, or the like. Except in these cases, the absence of the deeds affords ground for a suspicion that the property has been previously incumbered, and even the custody of the deeds does not always place a mortgagee beyond the reach of danger of this kind. *Vide ante*, Vol. 5, p. 475 *et seq.*

Variation where mortgage is of the whole estates.

(*d*) "henceforth during the terms of the respective natural lives of the said [*mortgagors*], and for all other their respective estates and interests in the said premises.

principal sum of 170*l.* of lawful British money, and interest for the same at the rate of 5*l.* per centum per annum, in manner following, that is to say, 25*l.*, part of the said principal sum, and interest for the whole thereof, at the rate aforesaid, at the end of one year now next coming; and the like sum of 25*l.*, other part of the said principal sum, at the end of each of the five succeeding years, with interest, at the rate aforesaid, for so much of the said principal sum as shall from time to time remain unpaid, and the residue of the said principal sum, with like interest for the same, at the end of the seventh year from the date hereof (*e*); then these presents, and the grant and (*f*) *demise hereby made, and the said term of ninety-nine years* shall cease, determine, and be absolutely void, (any thing herein contained to the contrary notwithstanding); AND the said [*mortgagors*], for themselves jointly and severally, and for their respeetive heirs, executors, and administrators, do hereby covenant with the said [*mortgagee*], his executors, administrators, and assigns, in manner following, that is to say, that they the said [*mortgagors*], or one of them, or the executors, administrators, or assigns of them or of one of them, shall or will pay unto the said [*mortgagee*], his executors, administrators or assigns, the said sum of 170*l.* and interest, on the several days and by the several instalments hereinbefore mentioned; *And that* they the said [*mortgagors*] have, or one of them has, full right,

25. BY TENANTS FOR LIFE, WITH LIFE INSURANCE.

Covenants by mortgagors:

to pay mortgage-money;

(*e*) If a policy is effected on the life of one of the mortgagors, as a collateral security, the whole principal sum should become payable at his death; otherwise the insurance-money would be in the hands of the mortgagee without being immediately applicable to the payment of the debt. In such case, add to the proviso:—

"or if, in case the said [*younger mortgagor*] shall depart this life before the expiration of the said seventh year from the date hereof, the said [*other mortgagor*], his executors, administrators, or assigns, or the executors, administrators, or assigns, of the said [*younger mortgagor*], shall, immediately on such his decease, pay unto the said [*mortgagee*], his executors, administrators, or assigns, the whole of the said principal sum of 170*l.* and interest, or so much thereof as shall remain unpaid, then," &c.

Variation, where mortgage-money is secured by a policy of insurance.

(*f*) "assurance hereby made."

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power, and authority to grant and assure the said messuage and premises unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid; *And that* after default shall have been made by the said [*mortgagors*], their executors, administrators, or assigns, in payment of the said principal sum and interest, or any part or instalment thereof, according to the proviso hereinbefore contained, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to enter upon and hold and enjoy the said messuage and premises, during all the residue which shall be then unexpired of the estate and interest hereby granted, without any interruption by the said [*mortgagors*], or any other person whomsoever, and free from all charges and incumbrances whatsoever;

For quiet enjoyment after default;—

And for further assurance.

And moreover, that they the said [*mortgagors*] respectively, and every other person having any estate, right, title, charge, or interest in, to, or out of the said messuage and premises, will, at all times hereafter, during the continuance of the estate hereby expressed or intended to be granted, and so long as any sum or sums of money shall be owing upon this security, at their or his own costs, on the request of the said [*mortgagee*], his executors, administrators, or assigns, make, do, and execute all such acts and assurances, for more effectually assuring the said premises unto the said [*mortgagee*], his executors, administrators, and assigns, in corroboration of and according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, shall be reasonably required (*g*); PROVIDED ALWAYS, and

Proviso for en-

(*g*) If a policy of assurance on the life of one of the mortgagors has been effected by the mortgagee, and is to be kept on foot at the expense of the mortgagors, as a collateral security, add—

Covenant to keep on foot policy of life-insurance;

"And also that the said [*mortgagors*], or one of them, his executors, administrators, or assigns, will, so long as any sum or sums of money shall remain due upon this security, keep on foot a certain policy of assurance, bearing date the —— day of —— last, effected by the said [*mortgagee*] on the life of the said [*younger mortgagor*], in the —— Office in London, for the sum of 150*l.*; or, in case the same, or any policy of assurance to be effected as hereinafter mentioned, shall by any means become void,

25. BY TENANTS FOR LIFE, WITH LIFE INSURANCE.

it is hereby declared, that, until default shall have been made in payment of the said principal sum and interest, or some portion or instalment thereof, according to the proviso hereinbefore contained, it shall be lawful for the

joyment until default.

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will effect in the said —— Assurance Office, or in some office of assurance in London or Westminster to be approved of by the said [*mortgagee*], his executors, administrators, or assigns, and keep on foot, a similar policy of assurance in the name or names of the said [*mortgagee*], his executors, administrators, or assigns, and will, from time to time, immediately after payment of the premiums to become payable in respect of such assurance already effected or to be effected as aforesaid, deliver to the said [*mortgagee*], his executors, administrators, or assigns, the receipts for the same; And in default thereof, that it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to keep on foot, or effect and keep on foot, such assurance as aforesaid; And the said [*mortgagors*], or one of them, their or one of their executors or administrators, will, on demand thereof, pay unto the said [*mortgagee*], his executors, administrators, or assigns, such sum or sums of money as he or they shall pay in and about such assurance, with interest for the same after the rate of 5*l.* per cent. per annum; and the same sum and sums of money and interest shall be a charge upon the said messuage and premises, and such premises or any part thereof shall not be redeemable by virtue of the proviso hereinbefore contained, until payment by the said [*mortgagors*], or one of them, their or one of their executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the monies so expended by him or them, and interest thereon as aforesaid, but so, nevertheless, that the total amount of principal money to be ultimately recoverable by virtue of these presents shall not exceed the sum of 200*l.**: *And also*, that the said [*younger mortgagor*] will, from time to time, at the request of the said [*mortgagee*], his executors, administrators, or assigns, attend in person as often as there shall be occasion, at any such office of assurance as aforesaid, and

and deliver receipts for premiums.

Any sums mortgagee may advance, to be repaid with interest.

To attend at insurance office, &c.

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* As to the necessity of a limitation of this kind, *vide ante*, Vol. 5, p. 120.

25. BY TENANTS FOR LIFE, WITH LIFE INSURANCE.

said [*mortgagors*], respectively, and their respective assigns, to enter upon, and hold and enjoy the said messuage and premises, without any interruption by the said [*mortgagee*], his executors, administrators, or assigns, or any person or persons claiming under him or them. IN WITNESS &c.

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give such evidence and information respecting his health, age, or otherwise, as shall be requisite, in order that an assurance may be effected on his life by the said [*mortgagee*], his executors, administrators, or assigns, as aforesaid, and will not do any act or commit any default whatsoever, by means of which the hereinbefore-mentioned policy, or any policy or policies of assurance to be effected as aforesaid, shall become void, or whereby any additional premium or premiums of assurance may become payable; And it is hereby further declared, that the said [*mortgagee*], his executors, administrators, and assigns, shall hold the policy or policies of assurance so effected or to be effected as aforesaid, in the first place for securing to him and them the monies hereby intended to be secured, and, subject thereto, *In trust* for the said [*younger mortgagor*], his executors, administrators, and assigns. (*See a longer form of covenant to keep on foot a policy of Life Insurance, and adapted to the case of a mortgage containing a trust for sale, post, Prec. No.* 34).

Declaration of trust of policy.

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26. OF AN EQUITY OF REDEMPTION.

26. MORTGAGE *in* FEE *of an* EQUITY *of* REDEMPTION, *with* (*in addition to usual provisions*) COVENANT *to* DELIVER TITLE-DEEDS *when former Mortgage is paid off; also to accept reduced Interest on punctual Payment.*

Parties.

THIS INDENTURE, made the —— day of ——, 18— BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part: WHEREAS the said [*mortgagor*] hath applied to and requested the said [*mort-*

Application and agreement for loan.

26. OF AN EQUITY OF REDEMPTION.

gagee] to advance and lend to him the sum of £——, which the said [*mortgagee*] hath agreed to do accordingly, upon the repayment thereof with interest being secured by a mortgage of the —— and hereditaments hereinafter mentioned, to which hereditaments the said [*mortgagor*] is now entitled in fee-simple in possession, subject to a mortgage in fee thereon for securing the sum of six thousand pounds and interest as hereinafter expressed (*a*). NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £——, of lawful British money, paid by the said [*mortgagee*] to the said [*mortgagor*] in hand, at or before the execution of these presents, the receipt whereof he doth hereby acknowledge, and therefrom and from every part thereof doth acquit, release, and discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns, by these presents, He the said [*mortgagor*] *Hath* granted, bargained, sold, released, and confirmed, *And* by these presents *doth* grant &c., unto the said [*mortgagee*], his heirs and assigns, (in the actual possession, &c., *ut ante*, p. 31. (*b*)). (*Describe parcels with general words.*) To HAVE AND TO HOLD the said ——, and all and singular other the hereditaments hereby granted and released, with their and every of their rights, members, and appurtenances, unto the said [*mortgagee*], his heirs and assigns, To THE USE of the said [*mortgagee*], his heirs and assigns, for ever, *subject nevertheless* to the proviso or condition for redemp-

Testatum.

In consideration of mortgage-money,

Mortgagor grants to mortgagee:—

Habendum.

To the use of mortgagee in fee.

(*a*) Where the prior mortgage is for a term only, say—

" of which hereditaments the said [*mortgagor*] is now seised in fee-simple in possession, subject to a mortgage thereon for a term of one thousand years, for securing," &c.

Variation, where prior mortgage is for a term only.

Where the first mortgage is for a term, and the second mortgage comprises the inheritance, it is not correct to style the latter a mortgage of the equity of redemption, since it embraces not only the interest comprised in the former mortgage (*i.e.* the term), but the inheritance, which is not affected by it. The deed is, therefore, a mortgage of the equity of redemption of the term, and a primary mortgage of the inheritance. The distinction, however, is merely technical, as all the valuable interest in the lands is comprised in the former mortgage, the fee-simple subject to a long term being of no real value.

(*b*) It is usual, though not necessary, to convey an equity of redemption by lease and release. Any instrument which would amount in equity to a charge, is sufficient for the purpose.

26. OF AN EQUITY OF REDEMPTION.

Proviso for redemption.

tion hereinafter contained, (that is to say), PROVIDED ALWAYS, and these presents are upon this express condition, that, if the said [*mortgagor*], his heirs, executors, administrators or assigns, do and shall pay or cause to be paid to the said [*mortgagee*], his executors, administrators or assigns, at or in the common Dining Hall of Lincoln's Inn, in the county of Middlesex, between the hours of eleven and twelve of the clock in the forenoon, the sum of —— of lawful British money, with interest for the same after the rate of 5*l.* per centum per annum, in manner following, (that is to say), the sum of £——, being one-half year's interest on the said sum of £—— after the rate aforesaid, upon the —— day of —— next ensuing, and the further sum of £——, being the whole principal money and one other half-year's interest thereon after the rate aforesaid, upon the —— day of ——, which will be in the year of our Lord ——, without any deduction or abatement whatsoever, [out of the same or any part thereof, for or in respect of any rates, taxes, charges, assessments, or impositions whatsoever, now taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed on the —— and hereditaments hereinbefore expressed to be hereby granted and released, or any part thereof, or upon the said principal sum of £—— or the interest thereon, or upon the said [*mortgagee*], his heirs, executors, administrators, or assigns, for or in respect of the same or any part thereof, by authority of Parliament or otherwise howsoever], [being the same principal money and interest as are in part secured by the bond of the said [*mortgagor*], bearing even date with these presents (*c*)]; then and in such case, and from and immediately after payment shall be so made as aforesaid, these presents and the grant and release hereinbefore expressed to be hereby made, and every clause, article, matter, and thing herein contained, shall cease, determine, and be absolutely null and void to all intents and purposes whatsoever, (any thing herein contained to the contrary thereof in anywise notwithstanding). AND the said [*mortgagor*] doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said [*mortgagee*], his heirs, executors, administrators, and assigns, in manner

Covenant by mortgagor to pay principal and interest monies;

(*c*) But as to bonds, *vide ante*, Vol. 5, p. 515.

following, (that is to say), that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of £—— of lawful British money, with interest for the same after the rate aforesaid, at the place and respective times and in the manner hereinbefore appointed for payment thereof, according to the true intent and meaning of these presents: AND ALSO, that he the said [*mortgagor*], now at the time of the sealing and delivery of these presents, hath in himself good right, full power, and lawful and absolute authority to grant, release, and convey the hereditaments hereinbefore expressed to be hereby granted and released, unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, in the manner aforesaid, according to the true intent and meaning of these presents, (subject nevertheless as hereinbefore mentioned); *And further* that it shall be lawful for the said [*mortgagee*], his heirs and assigns, from time to time and at all times for ever, from and after default shall be made in payment of the said sum of £—— and interest, or any part thereof, contrary to the proviso hereinbefore contained, and the true intent and meaning of these presents, peaceably and quietly to enter into, have, hold, use, occupy, possess, and enjoy, all and singular the —— and hereditaments hereinbefore expressed to be hereby granted and released, and the rents and profits thereof to receive and take for his and their own use, without any interruption or denial by him the said [*mortgagor*], or his heirs, or any other person or persons whomsoever; *And that* free and clear [and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*mortgagor*], his heirs, executors, administrators, or assigns, well and sufficiently saved harmless and indemnified, of] from and against all [and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, uses, trusts, wills, entails, statutes, recognizances, judgments, extents, executions, and all other estates, titles, troubles,] charges, and incumbrances whatsoever, save and except a certain mortgage created by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, whereby the said —— and hereditaments were conveyed unto and are now vested in [*prior mortgagee*], of &c., his

26. OF AN EQUITY OF REDEMPTION.

that he has good right to convey;

for quiet enjoyment after default,

free from incumbrances,

except prior mortgage;

26. OF AN EQUITY OF REDEMPTION.

and for further assurance:—

heirs and assigns (*d*), for securing the sum of six thousand pounds and interest (*e*): *And moreover*, that he the said [*mortgagor*], and his heirs, and every other person having or lawfully claiming, or who shall or may at any time hereafter have or lawfully claim, any estate, right, title, trust, charge, or interest, either at law or in equity, in, to, or out of the —— hereinbefore expressed to be hereby granted and released, or any part thereof, (save and except the person or persons claiming in respect of the said hereinbefore excepted mortgage), shall and will, from time to time and at all times hereafter, upon every reasonable request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, so long as the right or equity of redemption in the said hereditaments under or by virtue of these presents shall be subsisting and unbarred, and afterwards at the costs and charges of the said [*mortgagee*], his heirs or assigns, make, do, and execute, or cause to be made, done, and executed, every such further and other act, conveyance, and assurance in the law whatsoever, for the more effectually and absolutely granting, releasing, conveying, and assuring the same —— and hereditaments unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, (but subject nevertheless to the hereinbefore excepted mortgage), as by him the said [*mortgagee*], his heirs, executors, administrators, or assigns, or his or their counsel learned in the law, shall be devised or advised, and required; *And also*, that he the said [*mortgagor*], his heirs or assigns, shall and will, from time to time and at all times hereafter, whilst

To deliver attested copies while prior mortgage subsists;

(*d*) If the prior mortgage is for a term, say—

Variation, where prior mortgage is for a term.

"save and except a certain term of one thousand years, created by an indenture of mortgage bearing date the —— day of ——, whereby the said hereditaments were demised unto [*prior mortgagee*], of &c., his executors, administrators, and assigns, for securing the sum of six thousand pounds and interest."

(*e*) The precautions necessary to be observed by a mortgagee of an estate which is already in mortgage, are stated *ante*, Vol. 5, pp. 441 and 456.

26. OF AN EQUITY OF REDEMPTION.

the said sum of six thousand pounds secured by the hereinbefore-mentioned mortgage, and also the said sum of £—— hereby secured, or any part thereof, shall remain due and owing upon the security of the aforesaid —— and hereditaments, at his or their own costs and charges, procure, make, and give to the said [*mortgagee*], his executors, administrators, and assigns, whensoever thereto required by him or them, true copies of all and every the deeds, evidences, and writings mentioned and specified in the schedule hereunder written or hereunto annexed (*f*): *And further*, that, if the said sum of six thousand pounds and all interest for the same shall be paid off and discharged during the time that the said sum of £—— hereby secured, or any part thereof, shall remain due and owing, then the said [*mortgagor*], his heirs or assigns, shall and will immediately thereupon deliver or cause to be delivered into the hands of the said [*mortgagee*], his executors, administrators, or assigns, all and singular the said deeds, evidences, and writings, for the better evidencing, maintaining, defending, and proving the right and title of him the said [*mortgagee*], his heirs, executors, administrators, or assigns, in and to the manors and hereditaments hereby mortgaged as aforesaid; PROVIDED ALWAYS, and it is hereby declared and agreed, that, until default shall be made in payment of the said sum of £—— and interest, or some part thereof, contrary to the proviso and covenant hereinbefore contained, it shall be lawful for the said [*mortgagor*], his heirs and assigns, peaceably and quietly to hold and enjoy the —— and hereditaments hereinbefore expressed to be hereby granted and released, and to receive the rents and profits thereof, for his and their own use, without any interruption or denial whatsoever by him the said [*mortgagee*], his heirs, executors, administrators, or assigns, or by any other person or persons lawfully claiming or to claim from or under him or them. *And lastly*, the said [*mortgagee*], doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said [*mortgagor*], his heirs, executors, administrators, or assigns, that if the said [*mortgagor*], his

And upon payment thereof to deliver original deeds, &c.

Proviso for mortgagor's enjoyment until default.

Covenant to accept reduced interest, if paid within a given period.

(*f*) There is, in general, an objection to scheduling deeds in a mortgage, inasmuch as it prevents, on future occasions, the deeds thus referred to from being detached from the title, so long as the mortgage-deed forms part of it.

26. OF AN EQUITY OF REDEMPTION.

heirs, executors, administrators, and assigns, do and shall from time to time, yearly and every year, at any time or times whilst the said principal sum of £——, or any part thereof, shall remain due and owing upon the present security, pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, upon the —— day of —— and the —— day of ——, in every year, or within two calendar months next after the same days, respectively, interest after the rate of 4*l.* 10*s.* per centum per annum, for or in respect of the said sum of £——, or so much thereof as shall from time to time remain due and owing upon the present security, then and in such case, but not otherwise, he the said [*mortgagee*], his executors, administrators, or assigns, shall and will, from time to time, receive and accept such payments as are lastly mentioned, when and so often as the same shall be made, in lieu and satisfaction of and for the interest after the rate of 5*l.* per centum per annum firstly hereinbefore stipulated to be paid for the same principal sum; And shall and will, from time to time, give receipts accordingly for the whole interest on the said principal sum, or on such part thereof as shall then remain due and owing upon this present security as aforesaid, any thing hereinbefore contained to the contrary thereof notwithstanding (*g*). IN WITNESS &c.

(*g*) As to the clauses of this nature, *vide ante*, Vol. 5, pp. 396 and 644.

27. CONVEYANCE *to a* TRUSTEE *for Mortgagees, upon* TRUST *for* SALE, *(subject as to part of the Property to a prior Mortgage for a Term), to secure the Payment of an* EXISTING DEBT *by* INSTALMENTS: *Trust for Sale to be exercised in case of Non-payment of any Instalment, and also in case of Non-payment of prior Mortgage Debt, when called in. Prior Mortgage Debt to be paid out of Purchase-Money.*

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

THIS INDENTURE, made the —— day of ——, in the year of our Lord ——, BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagees*], of &c., of the second part; and [*trustee for sale*], of &c., of the third part: WHEREAS the said [*mortgagor*] now stands justly indebted to the said parties hereto of the second part (*a*), in the sum of £——, for money lent and advanced by them to him (*b*): AND WHEREAS the said [*mortgagor*] hath applied to the said parties hereto of the second part for time to pay the same debt, and hath proposed to liquidate the same with interest from the date of these presents, by the instalments, and at the times hereinafter particularly mentioned; and to secure the payment thereof by a conveyance in fee, by way of mort-

Parties.

Recital that mortgagor is indebted to mortgagees.

And had requested time for payment.

And proposed the present security.

(*a*) Where the parties are numerous, it is convenient to refer to them in these terms. In such cases, too, it is convenient to vest the power of sale in a trustee.

(*b*) If the money is secured by a bond, carrying interest, the following addition may be made to this recital:—

Variation, where there is a prior bond.

"and interest thereon, and which principal and interest monies are secured by a certain bond or obligation under the hand and seal of the said [*mortgagor*], bearing date on or about the —— day of ——, whereby he became bound to the said [*mortgagee*] in the penal sum of £——, conditioned for the payment of the sum of £—— and interest thereon, at the rate of £—— per annum, at a day now past, and which bond bears an ad valorem stamp of £—— in respect of the said sum of £——."

As to the stamp upon a mortgage to secure a sum already due upon specialty, *vide ante*, Vol. 5, p. 533.

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

gage, of the freehold messuages, lands, and other hereditaments hereinafter described, to be made to the said [*trustee for sale*], upon and for the trusts, intents, and purposes hereinafter expressed, and to which proposal they the said parties hereto of the second part have considered and agreed.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the above-recited agreement on the part of the said [*mortgagor*], and in consideration of the aforesaid sum of £—— of lawful British money, so due and owing from him to the said [*mortgagees*] as hereinbefore mentioned, the existence of which said debt or sum of £—— he the said [*mortgagor*] doth hereby admit and acknowledge, and thereof and therefrom doth acquit, release, and discharge the said [*mortgagees*], their heirs, executors, administrators, and assigns, for ever, by these presents, and for the purpose of securing the re-payment of the said sum of £—— and interest, he, the said [*mortgagor*], as well pursuant to and by virtue and in exercise of the several powers and authorities to him for this purpose given by a certain indenture of feoffment, bearing date on or about the —— day of ——, and made between [A. B.] of the first part, the said [*mortgagor*] of the second part, and [*trustee to prevent dower*] of the third part, (so far as respects the piece or parcel of land and the messuage thereon since erected and built, situate in ——, and firstly hereinafter described), and by a certain indenture of release bearing date on or about the —— day of ——, and made between [A. D.] of the one part, and the said [*mortgagor*] and [*trustee to prevent dower*] of the other part, (so far as respects the freehold messuages, cottages, lands, and hereditaments secondly hereinafter described), and of all other powers and authorities whatsoever enabling him in this behalf, as also in respect of his estates and interests in all and singular the said hereditaments, in default of the exercise of such several powers of appointment, *hath* directed, limited, and appointed, and also, (by way of auxiliary assurance), granted, bargained, sold, released, and confirmed, and by this deed or writing by him signed, sealed, and delivered in the presence of and attested by the two persons whose names are intended to be indorsed hereupon, as witnesses in that behalf, *doth* irrevocably direct, limit, and appoint, *And* by these presents *doth also* grant, &c. unto the said [*trustee for sale*], [in his actual possession now being by virtue of a bargain and sale

In consideration of debt,

Mortgagor, pursuant to the powers contained in certain deeds here referred to,

appoints, and also releases,

Unto trustee and his heirs,

for a year made to him by the said [*mortgagor*], by indenture bearing date the day next before the day of the date of these presents, and by force of the statute made for transferring uses into possession,] and his heirs, *All that* piece or parcel of land, &c., (*describing it, and the messuages thereon*), and which said piece of land, messuages, and other hereditaments are the same as are comprised in the indenture of feoffment of the —— day of ——, and hereinbefore referred to as meant to be firstly herein described; *And also*, all that messuage or tenement of him the said [*mortgagor*], now divided into two tenements or dwellings, situate in —— aforesaid, with the houses, outhouses, edifices, buildings, yards, gardens, and appurtenances thereto belonging; *And also* all that other messuage, (*describing it*), and which several lastly described messuages and hereditaments are the same as are comprised in the said indenture of release of the —— day of ——, and hereinbefore referred to as meant to be secondly herein described, and are subject to a mortgage by demise made thereof by the said [*mortgagor*] to [*prior mortgagee*], of &c., for the term of five hundred years, by an indenture dated the —— day of ——, for securing the re-payment of the sum of three hundred pounds and interest, as in the same indenture mentioned; and the whole of which said principal sum is now due and owing on the said mortgage security, with interest thereon from the —— day of —— last: *Together* with all and singular outhouses, edifices, buildings, yards, ways, paths, passages, waters, water-courses, lands, commons, common of pasture, profits, privileges, lights, easements, areas, advantages, and appurtenances whatsoever, to the messuages, land, and other hereditaments hereby appointed and released, or intended so to be, or any part thereof, belonging or in anywise appertaining, or to or with the same or any part thereof now or heretofore demised, used, occupied, or enjoyed; AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of all and singular the aforesaid messuages, lands, and other hereditaments; *And all* the estate, right, title, interest, use, trust, property, benefit, equity of redemption, claim, and demand whatsoever, of the said [*mortgagor*], in, to, and upon the same hereditaments; TO HAVE AND TO HOLD the messuages, lands, and all other the hereditaments hereby appointed and released,

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

Parcels first described;

Parcels secondly described:—

Reference to subsisting mortgage;

General words;

And the reversion, &c.

And all the estate, &c.

Habendum.

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

or intended so to be, and every part thereof, unto the said [*trustee for sale*], and his heirs, for ever, [*But subject, nevertheless,* as to the several messuages and other hereditaments secondly hereinbefore described, to the said mortgage made thereof to the said [*prior mortgagee*], for the said sum of three hundred pounds and interest, and to the said term of five hundred years created for securing the same as aforesaid,] TO THE ONLY USE and behoof of him the said [*trustee*], his heirs and assigns, for ever, upon and for the trusts, intents, and purposes, and with the powers hereinafter declared concerning the same: that is to say (*c*),

To the use of trustee in fee,

In trust, in case mortgagor shall pay mortgage-money by instalments,

Upon trust, in case the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do well and truly pay, or cause to be paid, to the said [*mortgagees*], their executors, administrators, or assigns, the said sum of £—— of lawful British money, with interest for the same at the rate of five pounds for every one hundred pounds for a year, by or in the instalments, and at the days or times following, (that is to say), the sum of £——, part of the said principal sum of £——, together with interest for the whole of the same principal sum from the day of the date of these presents at the rate aforesaid, on the —— day of —— now next ensuing; the sum of £——, further part of the then remaining principal sum of £——, with interest at the rate aforesaid on the last-mentioned sum from the said —— day of ——, on the —— day of —— now next ensuing; and the further or remaining principal sum of £——, together with interest for the same at the rate aforesaid from the said —— day of —— next, on the —— day of —— now next ensuing, without any deduction or abatement whatsoever out of the same principal and interest monies, or any part thereof respectively, upon any account whatsoever; then, and in such case, and in the meantime, until default shall be made in payment of the said principal and interest monies, or some part thereof, and also in case the said [*prior mortgagee*], his executors, administrators, or assigns, shall, at any time before such payment

and in case mortgagor shall pay off prior mortgage when called in,

(*c*) The precedent in the text, it will be observed, is not a mortgage properly so called, (which is a conveyance with a proviso for redemption), but it is a conveyance in trust for sale, subject to a trust to reconvey;—as to which mode of framing a security, see some remarks, *ante*, Vol. 5, pp. 108 and 502.

shall be wholly made, call in his said mortgage debt and interest, then if the same shall be forthwith paid off and discharged as hereinafter mentioned, UPON TRUST, to permit and suffer the said [*mortgagor*], his heirs and assigns, to retain the possession, and receive and take the rents and profits, of the several messuages, lands, and other hereditaments hereby appointed and released, or intended so to be, (subject as aforesaid as to the premises secondly above described); and in case and when the whole of the principal sum, and interest hereby secured, shall be duly paid and discharged at the times and in manner aforesaid, UPON TRUST, thereupon, or at anytime thereafter, on the request and at the costs and charges of the said [*mortgagor*], his heirs or assigns, to reconvey to him and them, or as he or they shall order and direct, the several messuages, lands, and other hereditaments hereby appointed and released, or intended so to be, as aforesaid, or so much thereof as shall not have been sold under the trusts hereinafter declared, free from all incumbrances to be made or permitted by the said [*trustee for sale*], his heirs or assigns, in the meantime; *But subject,* as to the premises secondly hereinbefore described, to the aforesaid mortgage made thereof to the said [*prior mortgagee*], as hereinbefore mentioned. BUT in case the said [*mortgagor*], his heirs, executors, administrators, and assigns, shall make default in payment of the said sum of £—— and interest, or any instalment or part thereof, respectively, at such times and in such manner as are hereinbefore for that purpose appointed; or if the said [*prior mortgagee*], his executors, administrators, or assigns, shall call in or demand payment of his aforesaid mortgage debt or sum of £——, and the interest thereof, and the said [*mortgagor*], his heirs, executors, administrators, and assigns, shall refuse or neglect forthwith to pay off and discharge the same, then and in any such case, and immediately thereupon, the principal sum of £—— and interest hereby intended to be secured, or so much thereof respectively as shall then remain unpaid, shall no longer be payable in the instalments and at the times hereinbefore for that purpose appointed; but the whole of the same sum and interest, or the residue thereof then remaining unpaid, as the case may be, shall forthwith become and be payable to, and recoverable by, the said [*mortgagees*], their executors, administrators, or assigns, as a present debt, any thing herein contained to the contrary notwithstanding;

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

to reconvey to mortgagor.

But in case of default in payment of any instalment,

or if mortgagor do not pay off prior mortgage debt when demanded,

then the whole of the monies hereby secured to be immediately payable;

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

And the said [*trustee for sale*], his heirs and assigns (*d*), shall stand and be seised of and interested in the messuages, lands, and other hereditaments hereby appointed and released, or intended so to be, UPON TRUST, thereupon, or at any time thereafter, to enter into the possession, or receipt of the rents and profits, of the messuages, lands, and other hereditaments hereby appointed and released, and also (*e*), [at the request in writing of the said parties hereto of the second part, or the survivors or survivor of them, or the executors or administrators of such survivor, or their or his assigns,] absolutely to sell and dispose of the same messuages, lands, and other hereditaments either together or in parcels, and by public sale or private contract; (and, when offered to sale by public auction, to buy in and again offer the same, or any part thereof, for sale, from time to time, as shall be thought fit), without the consent or concurrence of the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto any person or persons whomsoever, for the best price or prices in money that can or may be reasonably obtained for the same, and under and subject to such conditions and stipulations as may be deemed expedient. *And* for that purpose to enter into, make, and execute all necessary contracts with, and conveyances to, the purchaser or purchasers thereof, or as he, she, or they shall direct, and, if deemed expedient, to vary the terms of or rescind any contract for sale which shall or may have been entered into; *And it is hereby agreed and declared between and by all the parties hereto*, [that every sale, conveyance, assurance, act, deed, matter, and thing, which shall be made, done, or executed by the said [*trustee for sale*], his heirs or assigns, of and concerning the premises hereby authorized to be sold as aforesaid, shall be as

and trustee thereupon to enter and sell;

with liberty to buy in at any auction.

Contracts and conveyances by trustee to be valid.

(*d*) As to the right of a *transferree* of a mortgage to execute a power of sale contained in it, *vide ante*, Vol. 5, pp. 105 and 107.

In preparing trusts and powers of sale, care should be taken that the power to sell and the authority to give discharges to purchasers, are co-extensive, *i. e.* are given to precisely the same persons; for a discrepancy between them raises the question as to how far the one is controlled by the other. (See *Townshend* v. *Wilson*, 1 Barn. & Ald. 608, *ante*, Vol. 5, p. 106; but, as to which case, see Jacob, 193). And this is a species of inaccuracy very commonly met with.

(*e*) As to the validity of trusts for sale, limited indefinitely in regard to time, *vide post*, Vol. 10.

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

valid and effectual in the law, although the said [*mortgagor*], his heirs or assigns, shall not execute the same, or join therein, or assent thereto, as such conveyance, assurance, act, deed, matter, and thing would have been if the said [*mortgagor*], his heirs or assigns, had duly executed the same or joined therein, or assented thereto; *And*] that the receipt or receipts in writing of the said [*trustee for sale*], his heirs or assigns, shall be a sufficient and effectual discharge or discharges to any purchaser or purchasers of all or any part of the same hereditaments and premises, for his, her, or their purchase-money or moneys, or so much thereof respectively as shall be thereby acknowledged to be received, and also to any tenant or tenants thereof for any rents and profits which shall be paid by him or them to the said [*trustee*], his heirs or assigns; *And* that the same purchaser or purchasers, tenant or tenants, his, her, or their heirs, executors, administrators, or assigns, shall not afterwards be answerable or accountable for the loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the necessity of raising the money in such receipt or receipts acknowledged to be received, or any part thereof, nor shall such purchaser or purchasers be bound or obliged to inquire into or ascertain whether the several circumstances upon which the present trust or power of sale is hereby declared or given, or any of them, shall have taken place or arisen, or exist, nor shall the validity of his or their purchase or purchases be afterwards impeached or impeachable on the ground that he or they had express notice that such circumstances, or any of them, had not actually taken place or arisen, or did not in fact exist; AND *it is hereby agreed and declared between and by the parties hereto,* that the said [*trustee for sale*], his heirs or executors, administrators and assigns, shall stand and be possessed of, and interested in, the moneys to arise from the sale or sales of all or any of the messuages and other hereditaments hereby authorized to be sold as aforesaid, and the rents and profits of the same premises, after having entered into the possession or receipt of the rents and profits thereof, until the same shall be so sold, upon and for the trusts, intents, and purposes following, (that is to say), UPON TRUST, in the first place, to pay and satisfy, or retain to himself or themselves, thereout, all costs and expenses attending such sale or sales, or attempted sale or sales, or the recovery or receipt of the

Trustee's receipt to be a good discharge to purchasers.

Purchasers not obliged to inquire into the necessity of sales.

Declaration of the trusts of purchase-money:

First, to pay costs;

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

possession or rents and profits of the said hereditaments, or otherwise to be incurred in the execution of the trusts hereby declared; *And*, in the second place, to pay and satisfy thereout to the said [*prior mortgagee*], his executors, administrators, or assigns, his mortgage debt of £—— (*f*), so due to him on the security of the hereditaments secondly hereinbefore described as aforesaid, and the interest thereon, or so much of the same principal and interest moneys as shall be then due and unpaid, together with all costs and expenses, if any, attending the non-payment thereof; yet, so that the same last-mentioned messuages and hereditaments shall not be rendered further or more extensively liable thereto than the same were immediately before the execution of these presents; *And* that the said principal and interest moneys shall be discharged as aforesaid, only in case the hereditaments on which the same stand secured shall be actually sold under the present trust, and so far only as the moneys arising from such sale shall actually extend to discharge the same (*g*); *And* after such principal and interest moneys, and costs, if any, shall be fully paid and satisfied as aforesaid (*h*), UPON TRUST, in the third place, to pay and satisfy thereout to the said [*mortgagees*], their executors, administrators, or assigns, the said sum of £——, and the interest thereon, or so much and such parts of the said principal and interest moneys, or any of them, as shall be then due and unpaid, together with all costs and expenses, if any, attending the non-payment thereof respectively; *And* after all the aforesaid principal and interest moneys, costs, and expenses shall be wholly paid and satisfied, then, *Upon trust*, to pay over the residue or surplus of the trust moneys to arise by the means aforesaid, unto the said [*mortgagor*], his heirs

Secondly, to pay off prior mortgage debt;

Thirdly, to pay present mortgagees their debt;

And to pay the residue, if any, to the mortgagor.

(*f*) Where a trustee for sale is to pay off a prior mortgagee out of the proceeds of the sale, he should give the mortgagee the requisite notice, unless he can induce him to accept it without notice. *Vide ante*, Vol. 5, p. 379.

(*g*) And it seems proper to add—

"and so that nothing herein contained shall preclude the said [*trustee for sale*], his heirs or assigns, if he or they shall think fit, from disposing of the last-mentioned hereditaments, subject to the said mortgage-debt."

(*h*) "subject as aforesaid."

or assigns, for his and their own benefit. And the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagees*], their executors, administrators, and assigns, that he the said [*mortgagor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*mortgagees*], their executors, administrators, or assigns, the aforesaid sum of £——, and interest, in the instalments or shares, and on or at the days or times hereinbefore for that purpose mentioned, without any deduction or abatement whatsoever, according to the true intent of these presents. And the said [*mortgagor*] doth, for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee for sale*], his heirs and assigns, by these presents, in manner following, (that is to say), that he the said [*mortgagor*] now hath in himself good right and full power to appoint, release, and convey all the messuages, lands, and other hereditaments hereinbefore expressed to be hereby appointed and released, with their appurtenances, unto and to the use of the said [*trustee for sale*], his heirs or assigns, (subject to the principal sum hereinbefore mentioned to be secured on the several messuages and hereditaments hereinbefore secondly described, and the interest for the same), for the purposes and in manner aforesaid, according to the true intent of these presents; *And also*, that, if default shall be made in payment of the said sum of £——, or the interest, or any instalment or share thereof, contrary to the aforesaid trusts and agreement for payment of the same, or if the said first mortgage debt or principal sum of £—— and interest shall be called in and not forthwith discharged as aforesaid, then, and in any such case, but not otherwise, it shall be lawful for the said [*trustee for sale*], his heirs and assigns, at any time or times thereafter, into and upon all and every the messuages, lands, and other hereditaments hereby appointed and released, or intended so to be, or any part thereof, to enter, and the same thenceforth peaceably and quietly to hold, occupy, and enjoy, and to receive and take the rents and profits thereof, upon the trusts, and for the intents and purposes hereinbefore declared, without any interruption by the said [*mortgagor*], his heirs or assigns, or any person or persons whomsoever having or claiming, or hereafter to have or claim, any lawful or equitable estate, right, title, or interest, in, to, or out of

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

Covenant by mortgagor to pay debts;

also, with trustee, for title;

for quiet enjoyment after default,

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

the same messuage, lands, and other hereditaments, or any of them, (except the said [*prior mortgagee*], his executors, administrators, or assigns, in respect of his aforesaid mortgage debt and security); *And* that free and clear [or freely and clearly acquitted, exonerated, and discharged, or otherwise, by the said [*mortgagor*], his heirs, executors, or administrators, saved and kept harmless and indemnified] of, from, and against all [former and other gifts, grants, bargains, sales, jointures, dowers, mortgages, uses, wills, entails, statutes, judgments, recognizances, executions, rents, sums of money, forfeitures, re-entries, and all other estates, titles, troubles,] charges and incumbrances whatsoever, other than and except the said mortgage debt hereinbefore mentioned to be secured on the several messuages and hereditaments hereinbefore secondly described, and the interest thereon: *And moreover*, that he the said [*mortgagor*], and his heirs, and all and every other persons and person whosoever having or claiming, or to claim, any estate, right, title, trust, charge, or interest in or to the messuages, lands, and other hereditaments hereby appointed and released, or intended so to be, or any part thereof, (except the said [*prior mortgagee*], his executors, administrators, or assigns, in respect and during the continuance of his aforesaid mortgage debt and security), shall and will at all times hereafter, upon every request of the said [*trustee for sale*], his heirs or assigns, or of any person or persons beneficially interested in the security hereby made or intended so to be, but at the proper costs and charges of him the said [*mortgagor*], his heirs, executors, or administrators, until the said hereditaments shall be sold and conveyed under the trusts hereinbefore contained, and thenceforth at the costs and charges of the purchaser or purchasers thereof, his, her, or their heirs or assigns, make, do, and execute, or cause to be made, done, and executed, all such further and other acts, deeds, matters, conveyances, and assurances in the law whatsoever, for the further [and more effectually conveying and] assuring all the messuages, lands, and other hereditaments hereby appointed and released, or intended so to be, with their appurtenances, unto and to the use of the said [*trustee for sale*], his heirs and assigns, for ever, in the manner and for the purposes aforesaid; (But as to the messuages and other hereditaments hereinbefore secondly described, subject to the said mortgage debt of three hundred pounds and the

free from incumbrances;

and for further assurance.

interest for the same), as by the said [*trustee for sale*], his heirs or assigns, or any person or persons interested as aforesaid, or any of them, or his, their, or any of their counsel in the law, shall be reasonably devised or advised and required. In witness &c.

27. IN TRUST FOR SALE FOR SECOND MORTGAGEES.

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28. ASSIGNMENT *of Leaseholds to* Trustees *for* Sale, *to secure to a* Vendor *Part of the* Purchase Money *remaining unpaid* (*a*); *Vendor's* Covenants *for* Title, *&c.*

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

THIS INDENTURE, made &c. Between [*vendor*], of &c., of the first part; [*purchasers*], of &c., of the second part; and [*trustees for sale*], of &c., of the third part. Whereas (*recite letters patent and lease granted to vendor*). And whereas the said [*purchasers*] have contracted with the said [*vendor*] for the absolute purchase of the said leasehold premises for the respective residues of the said several terms of —— years and —— years, at or for the price or sum of twelve thousand pounds, to be paid or secured to be paid as follows, (that is to say), the sum of four thousand pounds, part thereof, to be paid at the time of the execution of the assignment of the said purchased premises, and the sum of eight thousand pounds, residue thereof, with interest for the same in the meantime, to be secured to the said

Parties.

Recital of agreement for purchase and security.

(*a*) [As to the *lien* of a vendor for unpaid purchase-money, *vide ante*, Vol. 5, p. 14.] Where part of the purchase-money of an estate remains on mortgage there are two modes of carrying the arrangement into effect. One is, by blending the mortgage and conveyance in one instrument, as in the precedent in the text; the other, by making the vendor convey to the purchaser for the whole consideration-money, and the purchaser, by a separate deed, convey back to the vendor by way of mortgage for the unpaid portion of the purchase-money, treating it as a loan in the ordinary way: and this is the more common mode, though the former is sometimes adopted to avoid expense, and has the additional advantage, that it prevents the mortgaged estate from becoming liable to any incumbrances affecting the purchaser, which, where the lands are freehold, and there is reason to suspect specialty *crown debts*, is an important consideration. See *Rex* v. *Lamb*, M'Clel. 402; 13 Price, 649, stated *ante*, Vol. 5, p. 71. Where the purchase and mortgage are effected by a single deed, it should be stamped with *ad valorem* duties for the whole purchase and mortgage monies.

As to mortgage to vendors.

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

That part of purchase-money has been paid.

Testatum.

Joint and several covenants for payment of unpaid purchase-money, and interest by instalments.

[*vendor*], his executors, administrators, or assigns, in manner hereinafter mentioned. AND WHEREAS, in pursuance of the said agreement on the part of the said [*purchasers*], they the said [*purchasers*] have this day paid the sum of four thousand pounds of lawful money of the United Kingdom to the said [*vendor*]; NOW THIS INDENTURE WITNESSETH, that, in further performance of the said agreement on the part of the said [*purchasers*], and in consideration of the assignment hereinafter contained, They the said [*purchasers*] do for themselves, their heirs, executors, and administrators, and each of them doth for himself, his heirs, executors and administrators, covenant and agree with the said [*vendor*], his executors and administrators, by these presents, That they the said [*purchasers*] or one of them, or the heirs, executors, or administrators of them, or one of them (*b*), will pay or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, the sum of eight thousand pounds of lawful money of the United Kingdom, with interest for the same after the rate of five pounds for every hundred pounds by the year, to be computed from the day of the date of these presents, in the parts, shares, and proportions, and on or at the days or times hereinafter mentioned, (that is to say), the sum of four thousand pounds, part thereof, with interest for the whole of the said sum of eight thousand pounds, on the —— day of —— now next ensuing; And the further sum of four thousand pounds, residue of the said sum of eight thousand pounds, on the —— day of ——, which will be in the year of our Lord ——, with interest for the same last-mentioned sum of four thousand pounds, after the rate aforesaid in the meantime, from the said —— day of —— next, until the said —— day of ——, half-yearly, on the —— day of —— and the —— day of ——, in every year, without any deduction or abatement whatsoever [out of the said sum of eight thousand pounds or the interest aforesaid, or any part thereof, respectively, for any present or future taxes or impositions, or any other matter, cause, or thing

(*b*) [These words express what is intended to be conveyed by the words in general use, "their or one of their heirs," &c., which mean, "one of the heirs, &c. of the persons previously mentioned," and not "the heirs, &c., of one of those persons;" unless, indeed, the words "one of their" were read as a possessive pronoun, formed from "one-of-them" considered as one word,—which would be contrary to the idiom of our language.]

whatsoever.] AND THIS INDENTURE FURTHER WITNESSETH, that, in further performance of the said agreement, and in consideration of the said sum of four thousand pounds to the said [*vendor*] paid by the said [*purchasers*] as hereinbefore is mentioned; the receipt of which said sum of four thousand pounds he the said [*vendor*] doth hereby acknowledge, and from the same and every part thereof doth acquit, release, and discharge the said [*purchasers*] respectively, and their respective heirs, executors, administrators, and assigns; *And also* in consideration of the said sum of eight thousand pounds hereby intended to be secured to the said [*vendor*], his executors, administrators, or assigns, (the said several sums of four thousand pounds and eight thousand pounds, making together the sum of twelve thousand pounds, the said purchase or consideration money as aforesaid); *And also* in consideration of the sum of ten shillings (*c*) of like lawful money paid by the said [*trustees for sale*] to the said [*vendor*], at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged); *He* the said [*vendor*], at the request and by the direction of the said [*purchasers*], (testified by their severally executing these presents), *Hath* bargained, sold, assigned, transferred, and set over, And by these presents *Doth* &c., unto the said [*trustees for sale*], their executors, administrators, and assigns, [*premises comprised in letters patent and lease*), together with all erections and improvements thereon, AND all the estate, terms of years both in possession and reversion, and all the benefit, right of renewal, and benefit of covenants, and other right, title, interest, claim, and demand of him the said [*vendor*], by virtue of the hereinbefore recited letters patent and indenture of lease respectively, or otherwise howsoever, in, to, and upon the said —— and premises; Together with the said

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

Further *testatum*:

Vendor, in consideration of monies paid and secured, assigns to trustees.

Parcels.

All the estate, &c.

(*c*) It may be observed here, once for all, in regard to nominal pecuniary considerations, that, though the practice of inserting them is almost universal, wherever no substantial consideration moves from a grantee to a grantor, yet there is only one case in which a consideration of this nature is essential to the efficacy of the instrument, and that is, where the deed takes effect as a bargain and sale under the Statute of Uses; and even then, the consideration need not be *pecuniary;* it is sufficient that it is *valuable,* as, a pepper-corn rent. In bargains and sales for a year, it is usual to introduce both a nominal money consideration and a *reddendum.* (*Vide ante,* Vol. 3, p. 162, 2nd ed.)

As to nominal pecuniary considerations.

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

letters patent and indenture of lease, and all benefit thereof respectively; To HAVE AND TO HOLD the said ——, and all and singular other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, henceforth during all the respective residues and remainders now to come and unexpired of the said several terms of —— years and —— years granted by the hereinbefore recited letters patent and lease respectively, and for all such further terms of years, or other estates or interests (if any) as the said [*vendor*] is entitled to therein; subject, nevertheless, to the payment of the rents and to the performance of the covenants in the said letters patent and indenture of lease respectively reserved and contained, and which are or ought henceforth on the tenant's or lessee's part to be paid and performed; And, as to all and singular the premises hereinbefore assigned, or intended so to be, *Upon the trusts*, and for the intents and purposes hereinafter contained, (that is to say), IN TRUST for the said [*purchasers*], their executors, administrators, and assigns, until default shall be made by them in payment of the said sum of eight thousand pounds and interest, or any part thereof respectively, in the shares or at the times and in the manner hereinbefore appointed for the payment thereof respectively, or until default shall be made by the said [*purchasers*], their heirs, executors, or administrators, in the performance of the covenants hereinafter contained on the part of them the said [*purchasers*], or some or one of them (*d*): AND UPON THIS FURTHER TRUST, that if the said [*purchasers*], their heirs, executors, administrators, or assigns, shall pay or cause to be paid the said sum of eight thousand pounds and interest to the said [*vendor*], his executors, administrators, or assigns, in the shares, or at the times, and in the manner hereinbefore appointed for the payment thereof respectively, and shall duly and faithfully perform the covenants of them the said [*purchasers*] hereinafter contained; Then, and in that case, they the said [*trustees*], or the survivor of them, his executors or admini-

Habendum.

In trust for purchasers until default.

Upon further trust to assign upon payment;

(*d*) As the trustees, by taking an assignment of the letters patent and lease, render themselves liable to the rents and covenants, it is fair that the trust for sale should be made exerciseable in default of the purchasers paying and performing them, pursuant to their covenant. (*Vide post*, p. 84).

strators, or their or his assigns, do and shall, immediately after such payment shall be so made as aforesaid, upon the request and at the costs and charges of the said [*purchasers*], their executors, administrators, or assigns, assign the said —— and other the premises hereby assigned, or intended so to be, with their appurtenances, unto the said [*purchasers*], their executors, administrators, or assigns, during all the residues which shall be then unexpired of the said several terms and interests respectively hereby assigned, or intended so to be, for their use and benefit. But if default shall be made by the said [*purchasers*], their executors, administrators, or assigns, in the payment of the said sum of eight thousand pounds and interest, or any part thereof respectively, at any one of the several days or times hereinbefore appointed for payment of the same respectively, or in performance of the covenants of the said [*purchasers*] hereinafter contained, or any or either of them; then, and in either of the said cases, and immediately thereupon, UPON TRUST that they the said [*trustees*], or the survivor of them, his executors, or administrators, or their or his assigns, do and shall absolutely sell and dispose of the —— and premises hereby assigned, or intended so to be, either together or in parcels, and either by public auction or by private contract, to any person or persons, for such sum or sums of money, and under and subject to such special or other conditions and stipulations as to the said [*trustees*], or the survivor of them, his executors, or administrators, or their or his assigns, shall seem reasonable; with liberty, if deemed expedient, to buy in the said premises at any auction or auctions, and re-sell the same at any future auction, or by private contract, and also to vary the terms of or rescind any contract for sale, which shall or may have been entered into, without being answerable for any loss occasioned thereby; And do and shall, for the purpose of such sale or sales as aforesaid, enter into, make and execute, all such contracts, covenants, agreements, acts, deeds, assignments, and assurances in the law, as to them or him shall seem reasonable. AND *it is hereby agreed and declared between and by the parties to these presents*, [that all the said contracts, covenants, agreements, acts, deeds, assignments, and assurances shall be binding and conclusive on the said [*purchasers*], their executors, administrators, or assigns, although they shall not join therein or assent

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

But in case of default of payment,

Upon trust to sell.

Contracts to be binding on mortgagors.

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

thereto; And] that the receipt or receipts in writing of the said [*trustees*], or the survivor of them, his executors, or administrators, or their or his assigns, for the money arising from the sale of the said —— and premises, or any part thereof, shall effectually discharge the person or persons to whom the same shall be given from being answerable or accountable for the [mis-application or non-application, or being anywise bound or concerned to see to the] application of the money therein expressed to be received; And that it shall not be necessary for any purchaser or purchasers under the said trusts to see that any such default shall have happened as aforesaid, or to inquire as to the necessity for, or expediency of, any such sale, nor shall he, she, or they be affected by express notice that the same is or are unnecessary and inexpedient. AND *it is hereby further agreed and declared between and by the parties to these presents*, that the said [*trustees*], or the survivor of them, his executors or administrators, or their or his assigns, do and shall, by, with, and out of the money arising from the sale of the —— and premises hereby assigned, or intended so to be, and the rents and profits which shall or may come to their or his hands, by virtue of these presents, which they and he are and is hereby empowered to receive, whether they or he shall actually proceed to a sale of the said hereditaments or not)(*e*), in the first place, retain to and reimburse themselves or himself, the costs and expenses, if any, incurred in paying the rents and performing the covenants reserved and contained by and in the hereinbefore recited letters patent and lease respectively as aforesaid, and also the costs and expenses attending the said sale or sales, or the receipt or recovery of the said rents and profits, or otherwise to be occasioned in or about the execution of the trusts hereby created, or any of them; and in the next place, do and shall pay and discharge unto the said [*vendor*], his executors, administrators, or assigns, the said sum of eight thousand pounds, or such part thereof as shall then remain unpaid, and all interest which shall be due for the same (*f*); And do and shall pay the surplus or residue

Trustee's receipts to discharge purchasers.

Trusts of purchase-money.

(*e*) As to the expediency of shewing that the mortgagee's entry is not to be restricted to the mere purpose of a sale, *vide ante*, Vol. 5, p. 411.

As to trusts for the investment

(*f*) In annuity deeds, containing trusts for sale, it is usual to provide for the investment of the purchase-money to answer the accruing pay-

(if any) of the said trust moneys, which shall remain unapplied to the purposes aforesaid, unto the said [*purchasers*], their executors, administrators, or assigns, for their proper use and benefit. And the said [*vendor*], for himself, his heirs, executors, and administrators, doth covenant and agree with the said [*trustees*], their executors, administrators, and assigns, by these presents, in manner following, (that is to say), That, for and notwithstanding any act, deed, default, matter, or thing whatsoever, by him the said [*vendor*] done, committed, or executed, or knowingly or wittingly suffered to the contrary, the above-recited letters patent, and the above in part recited indenture of lease respectively, at the time of the sealing and delivery of these presents, are good and effectual leases and demises in the law of and for the premises therein respectively comprised; and the terms of years thereby respectively granted as aforesaid are not, nor is either of them, forfeited, merged, surrendered, determined, or otherwise become void or voidable; And that, for and notwithstanding any such act, deed, default, matter, or thing whatsoever as aforesaid, he the said [*vendor*] now hath in himself good right, full power, and lawful and absolute authority, to assign the premises hereby assigned, or expressed and intended so to be, with the appurtenances thereunto belonging, unto the said [*trustees*], their executors, administrators, and assigns, for all the respective residues now unexpired of the said several terms of —— years and —— years, upon the trusts and in manner aforesaid, according to the true intent and meaning of these presents: *And that* it shall be lawful for the said [*trustees*], their executors, administrators, and assigns, from time to time and at all times hereafter, during the respective residues of the several terms aforesaid, peaceably and quietly to

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

Vendor covenants,

that notwithstanding any act by him, letters patent and lease are valid,

—and that he has power to assign;

—for quiet enjoyment;

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ments of the annuity, (*vide ante*, Vol. 1, p. 552, 2nd ed.), and a like provision might seem to be requisite where the mortgage-money is payable by instalments, as default might be made in payment of one of the instalments before the other was payable. In such a case, if the continuance of the money on the security were deemed to be beneficial to the mortgagee, he might require the insertion of a clause of this nature; but which is rarely done. The annuity clause might, if occasion required, be easily adapted to the case supposed; but, if the value of the property greatly exceeded the amount of the mortgage-money, the clause should direct an adequate portion only of the moneys arising from the sale to be invested.

of purchase-money.

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

enter into and upon, and to have, hold, occupy, possess, and enjoy the premises hereby assigned, or intended so to be, with their appurtenances, and to receive and take the rents, issues, and profits thereof, and of every part thereof, upon the trusts hereinbefore declared, without any lawful interruption, claim, or demand whatsoever, of or by him the said [*vendor*], his executors or administrators, or of or by any other person or persons lawfully or equitably claiming or to claim by, from, or under or in trust for him, them, or any of them:

—free from incumbrances;

And that free and clear, and for ever discharged, or otherwise, by the said [*vendor*], his heirs, executors, or administrators well and sufficiently defended, saved, and kept harmless and indemnified of, from, and against all estates, titles, charges, and incumbrances whatsoever, either already had, made, executed, occasioned, or suffered, or hereafter to be had, made, executed, occasioned, or suffered by the said [*vendor*], his executors or administrators, or by any person or persons lawfully or equitably claiming, or to claim, by, from, or under, or in trust for him or them:

and for further assurance.

And further, that he the said [*vendor*], his executors and administrators, and every other person lawfully claiming any estate, right, title, interest, charge, property, claim, or demand whatsoever, either at law or in equity, in, to, out of, or upon the premises hereby assigned, or intended so to be, or any part thereof respectively, by, from, or under, or in trust for him the said [*vendor*], or his executors or administrators, will, from time to time and at all times hereafter, during the respective residues of the said several terms of —— years and —— years, upon every request, and at the proper costs and charges of the said [*trustees*], their executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful acts, deeds, assignments, and assurances in the law whatsoever, for the more effectually and absolutely assigning and assuring of the premises hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, for the respective residues which shall be then to come of the same several terms, or either of them, as by the said [*trustees*], their executors, administrators, or assigns, or their counsel in the law, shall be reasonably advised and required.

Joint and several covenant by purchasers:

AND the said [*purchasers*] do for themselves, their heirs, executors, administrators, and assigns, and each of them doth

for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said [*trustees*], their executors, administrators, and assigns, by these presents, that they the said [*purchasers*], their executors, administrators, or assigns, shall and will, from time to time, during so long as any sum of money shall be owing on the security intended to be hereby made, insure, and keep insured, the said —— erections and buildings from and against all losses to be occasioned by fire, in the names of them the said [*trustees*], their executors, administrators, or assigns, in the —— Office, or some other office or offices, for insurance against fire in London or Westminster, in the sum of £—— at the least: and shall and will, from time to time, deliver to the said [*vendor*], his executors, administrators, or assigns, or to the said [*trustees*], their executors, administrators, or assigns, the policy or policies of such insurance or insurances, and will, from time to time, within seven days after the annual premium and other expenses shall become due in respect of such insurances, pay the same, and, if thereunto requested by the said [*vendor*], his executors, administrators, or assigns, or by the said [*trustees*], their executors, administrators, or assigns, deliver to him or them the receipts for such premium and expenses; *And further*, that in case the said [*purchasers*], their executors, administrators, or assigns, shall, at any time or times hereafter, fail or neglect to keep so insured the said —— erections and buildings, or to deliver such policy or policies, or receipt or receipts, as aforesaid, according to the true intent and meaning of the covenant hereinbefore contained, it shall be lawful for the said [*vendor*], his executors, administrators, or assigns, from time to time, during so long time as any money shall be owing by virtue of these presents, to insure and keep insured the same premises, in the names of the said [*trustees*], their executors, administrators, or assigns, from fire, in any office or offices of insurance in London or Westminster, in any sum or sums of money not exceeding in the whole the said sum of £——; *And* that they the said [*purchasers*], their executors or administrators, shall and will, within the space or period of —— days after payment by the said [*vendor*], his executors, administrators, or assigns, of any sum or sums of money for insuring or keeping insured the said premises, as aforesaid, pay the same to the said [*vendor*], his executors, administrators, or assigns, with interest thereon, after the rate aforesaid, from the time or respective times of his or their ad-

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

to insure buildings from damage by fire;

and, in default, that vendor may insure in the names of trustees;

that purchasers will repay the sums so expended with interest;

28. TO SECURE UNPAID RESIDUE OF PURCHASE MONEY.

vancing the same, and that the said premises shall stand and be charged therewith, and be a security for the repayment thereof unto the said [*vendor*], his executors, administrators, and assigns; And the same shall accordingly be raised and paid in the same manner as hereinbefore is expressed with respect to the said sum of eight thousand pounds, and the interest thereon: *And also* that they the said [*purchasers*], their executors, administrators, or assigns, shall and will, at all times during so long as they shall be in the possession or receipt of the rents and profits of the —— and premises hereby assigned, or intended so to be, under the trusts hereinbefore contained, pay the rents reserved and made payable in and by the several hereinbefore recited letters patent and indenture of lease respectively, as aforesaid, and perform all the covenants and agreements therein respectively contained, on the part of the tenant or lessee from henceforth to be performed; *And* from the same rents, covenants, and agreements respectively, and all costs and expenses on account of any breach, neglect, or default of or in payment or performance thereof respectively, as aforesaid, shall and will keep indemnified the said [*trustees*], their heirs, executors, and administrators, and their and every of their lands and tenements, goods, and chattels, respectively.—(*Power to appoint new trustees, ut ante, Vol.* 4, p. 303, 2nd ed.) IN WITNESS &c.

to pay rents, and perform covenants of letters patent and lease.

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29. BY SURETY, WITH TRUST FOR SALE.

29. CONVEYANCE *in Fee, in* TRUST *for* SALE, *to secure the* BALANCE *for the Time being due to Mortgagees* (*a* MERCANTILE FIRM), *from the Mortgagor's Son, for* GOODS TO BE SUPPLIED *to him upon Credit,* (*for which the Deeds of the Estate had been antecedently deposited*). JOINT *and* SEVERAL COVENANT *by* PRINCIPAL *and* SURETY. *Usual Provisions adapted to the case of a* SECURITY BY A SURETY *for a floating Balance to a fluctuating Firm.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., of the first part; [*principal debtor*], of &c., of the second part; and [*two mortgagees*], of &c., Manchester warehousemen and copartners, of the third part.

Recital that

WHEREAS the

29. BY SURETY, WITH TRUST FOR SALE.

said [*mortgagor*] is well and sufficiently seised of or entitled in fee-simple unto the lands and hereditaments hereinafter described, in possession, free from all incumbrances. AND WHEREAS the said [*mortgagees*], some time since, at the solicitation and request of the said [*mortgagor*], agreed to supply her son, the said [*principal debtor*], with goods upon credit; and in consideration thereof, the said [*mortgagor*] deposited with the said [*mortgagees*] the title deeds relating to the said hereditaments to which she is entitled as aforesaid, for the purpose of securing any sum or sums of money (not exceeding the principal sum hereinafter mentioned) which might, from time to time, be owing from the said [*principal debtor*] to the said [*mortgagees*], or either of them, or their or his partner or partners, or successor or successors, upon the balance of accounts for the goods so to be furnished to him as aforesaid (*a*). AND WHEREAS, for the purpose of carrying more completely into effect the objects of the said security, it has been agreed by and between the said parties to these presents, that the said [*mortgagor*] shall execute to the said [*mortgagees*] the conveyance and assurance hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement, and in consideration of the premises, and also in consideration of the sum of 10*s.* of lawful money of the United Kingdom, paid by the said [*mortgagees*] to the said [*mortgagor*] at or immediately before the execution of these presents, the receipt whereof is hereby acknowledged, the said [*mortgagor*] *hath* granted, bargained, sold, released, and confirmed, and by these presents *doth* grant &c. unto the said [*mortgagees*], and their heirs, (in the actual possession, &c., *ut ante*, p. 31); All &c. (*parcels, general words, and all the estate &c., and all deeds &c., ut ante*, p. 31): To HAVE AND TO HOLD the said ——, and all and singular other the premises hereby released, or intended so to be, with their appurtenances, unto the said [*mortgagees*], and their heirs, To THE USE of them the said [*mortgagees*], their heirs and assigns, for ever, *Upon the trusts* hereinafter declared concerning the same; that is to say, UPON TRUST for securing the payment

mortgagor is entitled in fee;

that mortgagees had agreed to supply principal debtor with goods upon credit;

that mortgagor had deposited deeds as a security.

Testatum.

Habendum,

To the use of mortgagees;

Upon trust for

(*a*) If so intended, add—
"or on any other account."

29. BY SURETY, WITH TRUST FOR SALE.

securing balance owing from principal to mortgagees.

of any sum or sums of money, (not exceeding in the whole the principal sum hereinafter mentioned), in which the said [*principal debtor*] may, at any time, or from time to time hereafter, be indebted to the said [*mortgagees*] or either of them, their or either of their executors, administrators, or assigns, on the balance of accounts for goods sold and delivered by them or him, unto or for the use or on account of the said [*principal debtor*], or on any promissory note or notes, or bill or bills of exchange, made, drawn, indorsed, or accepted by the said [*principal debtor*], on account of such goods (*b*), clear of all deductions whatsoever. AND for that purpose, in case default shall be made in payment of the whole or any part of such sum or sums of money, for the space of three calendar months after the same shall have become due and payable, Then, UPON TRUST, at any time or times thereafter, so long as any of the said sum or sums, or any part thereof, shall remain unpaid, without the necessity of any further consent or concurrence on the part of the said [*mortgagor*], her heirs or assigns, to make sale and absolutely dispose of the hereditaments and premises hereby released, or intended so to be, or any part or parts thereof, either together or in parcels, and either by public auction or private contract, for the best price or prices that can be reasonably gotten for the same, and under and subject to such conditions and stipulations as shall or may be deemed expedient, with liberty to buy in the same at any auction or auctions, and to rescind or vary the terms of any contract for sale which shall or may have been entered into, without being answerable for any loss which may be occasioned thereby: and convey and assure the said hereditaments, when sold, unto the purchaser or purchasers thereof, his, her, or their heirs and assigns. AND UPON FURTHER TRUST, out of the rents and profits of the said hereditaments and premises, until the sale thereof, and also out of the moneys which shall arise from any sale or sales to be made as aforesaid, in the first place, to retain or pay and satisfy all costs, charges, and expenses attending the receipt or recovery of the said rents and profits, or incident to such sale or sales, or otherwise incurred in the execution of these present

In default of payment, upon trust for sale.

Application of moneys.

(*b*) If so intended, add—

"or on any other account whatsoever."

trusts; And in the next place, to retain or pay and satisfy unto the said [*mortgagees*], or either of them, or the executors, administrators, or assigns of them or either of them, the sum or sums of money (not exceeding the amount hereinafter mentioned) in which the said [*principal debtor*], his executors or administrators, shall be indebted to them or him on the balance of accounts, as aforesaid; and all costs, charges, and expenses sustained or incurred in or about any suit or suits at law or in equity, which shall be instituted for enforcing the payment of such sum or sums, or any part thereof: And in case, after retaining or paying, or satisfying the sum or sums, costs, charges, and expenses aforesaid, any residue or surplus of the money which shall be received by the said [*mortgagees*] or the survivor of them, their or his heirs, executors, administrators, or assigns, by virtue of the trusts aforesaid, shall remain in their or his hands, unapplied to any of the purposes aforesaid, THEN UPON TRUST, to pay such residue or surplus unto the said [*mortgagor*], her heirs or assigns, for her or their own use and benefit; But in case the whole of the sum or sums hereby secured, together with all such costs, charges, and expenses, (if any), as aforesaid, shall be paid or satisfied, either by the means aforesaid or by any other means, before the whole or any part of the said hereditaments shall be sold under the trusts aforesaid, THEN UPON TRUST, at the request and costs of the said [*mortgagor*], her heirs or assigns, to reconvey the same, or so much thereof as shall remain unsold, unto the said [*mortgagor*], her heirs or assigns, free from all incumbrances created by the said [*mortgagees*], or either of them, or the heirs or assigns of them or either of them, in the meantime, and upon or for no other trust, intent, or purpose whatsoever.

29. BY SURETY, WITH TRUST FOR SALE.

PROVIDED ALWAYS, *and it is hereby further declared*, that the total amount of principal moneys to be ultimately recoverable under or by virtue of the security hereby made, shall not exceed the sum of £——; and that such security shall not be considered as wholly or partially satisfied by the payment or liquidation, (otherwise than by putting in force the same security), of any sum or sums of money which shall at any time, or from time to time, be due and owing from the said [*principal debtor*] on balance of such accounts as aforesaid, or as wholly satisfied by the payment or liquidation, by means of such security, of the entire balance which shall at any time be so due and owing, unless the same, either alone, or

Principal money not to exceed £——.

Security not to be satisfied by payment of moneys by debtor.

29. BY SURETY, WITH TRUST FOR SALE.

together with any sum or sums previously paid or liquidated, shall in like manner be equal to the total amount aforesaid, but that the said security shall extend to cover any sum or sums of money which shall, for the time being, constitute the balance due from the said [*principal debtor*], until principal moneys to the full amount aforesaid shall have been actually recovered or satisfied by means of the security herein contained (*c*). PROVIDED ALSO, *and it is hereby further declared*, that in case of the decease of either of them the said [*mortgagees*], the receipt of the survivor of them, and after the decease of such survivor, the receipt or receipts of his executors or administrators, or of his or their assigns, without the concurrence of the executors or administrators of such of them as shall first have departed this life, shall be an effectual discharge or effectual discharges for any sum or sums of money hereby intended to be secured, and shall exonerate the person or persons paying the same from all responsibility in respect of the application thereof; *And further*, that this present security shall not be in any manner prejudiced or affected by the death of either of them the said [*mortgagees*], or his retirement from the trade or business now carried on by them in copartnership as aforesaid, but shall continue in full force for the benefit of the surviving or continuing partner, in respect of any debt which shall become owing to him from the said [*principal debtor*] after such death or retirement, either alone or together with any partner or partners, for the time being, in their trade or business, and after the decease or retirement of both of them the said [*mortgagees*], then the same security shall continue in full force for the benefit of the person or persons for the time being carrying on the said trade or business, as the successor or successors of the said [*mortgagees*], any rule of law or equity to the contrary notwithstanding (*d*). PROVIDED ALSO, *and it is hereby further declared*, and the said [*mortgagor*] hereby expressly directs, that every receipt which shall be given by the said [*mortgagees*] or the survivor of them, or his heirs, or their or his assigns, to

Receipt of survivor to be a discharge.

Security not to be affected by the death or retirement of any member of the firm.

Receipt of mortgagee to discharge purchasers.

(*c*) This clause is introduced to exclude the rule adopted in *Kirby* v. *Duke of Marlborough*, 2 Mau. & Sel. 18, stated *ante*, Vol. 3, p. 240, 2nd ed.

(*d*) This clause is inserted from abundant caution, to prevent the application of the doctrine discussed *ante*, Vol. 5, p. 329.

29. BY SURETY WITH TRUST FOR SALE.

the purchaser or purchasers of the hereditaments hereby released, or to any other person or persons paying to them or him any sum or sums of money in execution of the said trust, shall be an effectual discharge for the same; And that, after taking such receipt, the said purchaser or purchasers, or other person or persons, shall not be obliged to see to the application of the same money, or any part thereof; AND *it is hereby further declared*, that every sale which shall be made, and every conveyance which shall be executed by the said [*mortgagees*] or the survivor of them, or his heirs, or their or his assigns, shall be binding and conclusive on the said [*mortgagor*], her heirs and assigns; And that the purchaser or purchasers of the said premises shall not be obliged to inquire whether any sale or sales is or are necessary or proper for any of the purposes hereinbefore expressed, nor be affected by express notice that the same is or are unnecessary and improper. AND the said [*principal debtor*] and [*mortgagor*] do for themselves, their heirs, executors, and administrators, jointly and severally, hereby covenant and agree with the said [*mortgagees*], their executors, administrators, and assigns, That the said [*principal debtor*] and [*mortgagor*], or one of them, or the heirs, executors, or administrators of them or one of them, will pay or cause to be paid unto the said [*mortgagees*] or one of them, or the executors, administrators, or assigns of them or one of them, such sum or sums of money (not exceeding the principal sum aforesaid) as may at any time, or from time to time hereafter, be due and owing from the said [*principal debtor*] to the said [*mortgagees*] or either of them, or the executors, administrators, or assigns of them or either of them, at the time or times and in the manner expressed for the payment of the same in the trust for sale hereinbefore contained, according to the true intent and meaning of these presents. PROVIDED NEVERTHELESS, and it is hereby declared, that this present covenant shall not operate to restrict or limit the liability of the said [*principal debtor*], his executors or administrators, in respect of any debt or debts which he or they may hereafter contract with the said [*mortgagees*], or either of them, or the executors, administrators, or assigns of them or either of them, nor shall such covenant be pleaded by the said [*principal debtor*], his executors or administrators, in bar to any action of *assumpsit* or otherwise, that shall be brought

Sales to be binding on mortgagor.

Joint and several covenants to pay mortgage-money.

Covenant not to be restrictive of principal debtor's liability.

29. BY SURETY, WITH TRUST FOR SALE.

for such debt or debts, it being the intention of the parties hereto, that the said [*principal debtor*], his executors and administrators, shall be liable to pay such debt or debts at the same time or times, according to the terms of the contract or contracts respecting the same, and in the same manner in all respects as if these presents had not been made, any rule of law or equity to the contrary notwithstanding. AND the said [*mortgagor*], for herself, her heirs, executors, and administrators, doth hereby covenant with the said [*mortgagees*], their heirs and assigns, that she the said [*mortgagor*] is now seised of, or well entitled to, a clear, rightful, absolute, and indefeasible estate of inheritance in fee-simple in possession in the hereditaments hereinbefore described, and hereby intended to be released; *And that* she the said [*mortgagor*] now hath in herself good right and absolute authority to assure the same unto and to the use of the said [*mortgagees*], their heirs and assigns, for ever, in manner aforesaid; *And also*, that it shall be lawful for the said [*mortgagees*], their heirs and assigns, at all times for ever hereafter peaceably and quietly to enter into or upon, and hold and enjoy the hereditaments hereby released, and to receive and take the rents and profits of the same upon the trusts aforesaid, without any eviction, interruption, or denial, from or by any person or persons whomsoever; *And that* free and clear from all estates, rights, titles, charges, and incumbrances whatsoever, except the land-tax henceforth to become due in respect of the said hereditaments; *And also* that the said [*mortgagor*], and her heirs, and every person whosoever having or rightfully claiming any estate, right, title, or interest, at law or in equity, in, to, or out of the hereditaments hereby intended to be released, or any part thereof, (except as aforesaid), will or shall, at any time and from time to time, upon every reasonable request of the said [*mortgagees*], or the survivor of them, his executors or administrators, or their or his assigns, and at the costs and charges of the said [*mortgagor*], her heirs or assigns, until the said hereditaments shall be sold and conveyed under the trusts for sale hereinbefore contained, and afterwards at the costs and charges of the said [*mortgagees*], their heirs or assigns, make, do, acknowledge, execute, and perfect every such lawful act, deed, conveyance, or assurance in the law whatsoever, for more effectually or satisfactorily granting,

Covenants by mortgagor:—

that she is lawfully seised,

and has good right to convey;

for quiet enjoyment, free from incumbrances,

except the land-tax;

and for further assurance.

29. BY SURETY, WITH TRUST FOR SALE.

releasing, confirming, or otherwise assuring the hereditaments hereby intended to be released unto and to the use of the said [*mortgagees*], their heirs and assigns, for ever, in the manner aforesaid, according to the true intent and meaning of these presents, as by the said [*mortgagees*], or either of them, or the heirs or assigns of them or either of them, or by their or his counsel in the law, shall be advised and required. AND the said [*mortgagees*] do for themselves, their heirs, executors, and administrators, and each of them doth for himself, his heirs, executors, or administrators, hereby covenant with the said [*mortgagor*], her heirs and assigns, that they the said [*mortgagees*], their heirs and assigns, will not take possession of, nor enter into the receipt of the rents and profits of the hereditaments hereby released, or proceed to a sale thereof, under the trust hereinbefore contained, until such default shall have been made by the said [*principal debtor*] and [*mortgagor*], or one of them, or the heirs, executors, or administrators of them or one of them, in payment of the moneys hereby intended to be secured, or some part thereof, as is hereinbefore mentioned or provided in and by the same trust for sale; but so, nevertheless, that this present covenant shall not affect any purchaser or purchasers under the said trust for sale, nor any person or persons claiming under such purchaser or purchasers. IN WITNESS &c.

Covenant by mortgagees not to enter or sell until default.

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30. MORTGAGE *in* FEE, *by* TENANT *for* LIFE *and* REMAINDER-MAN, *a subsisting Mortgage Debt being paid off out of the Money now advanced, and* TERM *of One Thousand Years vested in such Mortgagee* ASSIGNED, *in Trust to* ATTEND *the* INHERITANCE, &c., *for the Benefit of the present Mortgagee. (Variation where Mortgage Money is collaterally secured by a* WARRANT *of* ATTORNEY).

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

THIS INDENTURE, of four parts, made &c., BETWEEN [*mortgagor tenant for life*], of &c., and [*mortgagor remainder-man*] of &c., of the first part; [*prior mortgagee*], of &c., of the second part; [*present mortgagee*], of &c., of the

Parties.

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

third part; and [*trustee of term*], of &c., of the fourth part. WHEREAS (*a*), by indenture tripartite, bearing date on or about the —— day of —— which was in the year 1784, and made between the said [*mortgagor tenant for life*], of the first part; the said [*mortgagor remainder-man*], eldest son of the said [*mortgagor tenant for life*], of the second part; and [*C— C—*], of &c., of the third part: *It was witnessed*, that, in consideration of the love and affection which the said [*mortgagor tenant for life*], had and bore for the said [*mortgagor remainder-man*] and for the other considerations therein expressed, *He* the said [*mortgagor tenant for life*] did covenant, grant, and agree to and with the said [*C— C—*], his heirs and assigns, that he the said [*mortgagor tenant for life*], his heirs and assigns, and all other persons who then stood, or should at any time thereafter stand seised of the therein and hereinafter-mentioned hereditaments, should and would stand and be seised of the —— and hereditaments hereinafter described, and hereby released or intended so to be, *To the use* of him the said [*mortgagor tenant for life*], and his assigns, for and during the term of his natural life, and from and after his decease, then *To the use and behoof* of the said [*mortgagor remainder-man*], his heirs and assigns, for ever. AND WHEREAS, by an indenture of demise or mortgage, bearing date on or about the —— day of ——, in the year ——, and made between the said [*mortgagor tenant for life*] and [*mortgagor remainder-man*], of the one part; and the said [*prior mortgagee*], of the other part; the said [*mortgagors*], in consideration of the sum of £200 to them or one of them paid, advanced, and lent by the said [*prior mortgagee*], did grant, bargain, sell, and demise unto the said [*prior mortgagee*], his executors, administrators, and assigns, the —— and hereditaments hereinafter described, and hereby released or intended so to be; *To hold* the same unto the said [*prior mortgagee*], his executors, administrators, and assigns, during the term of one thou-

Recital of settlement;

—of prior mortgage.

As to covenants to stand seised.

(*a*) This recital affords an example of a settlement effected by means of a covenant to stand seised,—a species of conveyance now generally disused, but which may be conveniently adopted in certain cases, even at the present day, as where a parent is desirous simply to make a conveyance in fee in favour of a child, or (as here) to the use of himself for life, with remainder in fee for his child, without any power of granting leases to strangers, or any other power in favour of persons to whom the consideration of blood does not extend.

sand years; But subject, nevertheless, to a proviso therein contained for redemption of the said premises, on payment by the said [*mortgagors*], or either of them, or the assigns of them or either of them, or the heirs, executors, or administrators of the said [*mortgagor remainder-man*] unto the said [*prior mortgagee*], his executors, administrators, or assigns, of the said sum of £200, with interest for the same, at the times and in the manner therein mentioned: AND WHEREAS the said sum of £200, secured to the said [*prior mortgagee*] by the said indenture of demise or mortgage, was not paid to him at the time therein appointed for that purpose, by reason whereof the estate and interest of him the said [*prior mortgagee*], of and in the —— and premises so thereby demised, became absolute in law for all the residue of the said term of one thousand years; AND WHEREAS there is now remaining due and owing unto the said [*prior mortgagee*], for principal and interest, upon or by virtue of the above-recited security, the sum of 218*l.* 15*s.*, and no more, as he doth hereby acknowledge: AND WHEREAS the said [*mortgagors*], having occasion for the sum of £300, have requested the said [*present mortgagee*] to advance them the same, as well to enable them to pay off the mortgage debt or sum of 218*l.* 15*s.* so due and owing unto the said [*prior mortgagee*] as aforesaid, as also to supply their other occasions: And the said [*present mortgagee*] hath accordingly agreed to advance to the said [*mortgagors*] the said sum of £300 at interest, upon having the same secured by a grant and conveyance of the premises comprised in the above-recited indenture of demise in manner hereinafter expressed (*b*); and it hath been agreed that the residue of the said mortgage term of one thousand years shall be assigned by the said [*prior mortgagee*], to the said [*trustee of term*], upon the trusts hereinafter declared (*c*). NOW, *Testatum.*

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

—of default in payment of mortgage-money;

—of agreement for loan by present mortgagee.

(*b*) Add, if so intended—

"and by the several warrants of attorney to enter upon record judgment against the said [*mortgagors*]."

Where a debt is to be secured by a judgment against several persons, it is advisable to have a separate judgment against each, rather than a joint judgment against the whole; for reasons stated, *ante*, Vol. 5, p. 54.

Judgment against each of several persons preferable to joint judgment.

(*c*) "AND WHEREAS, in pursuance of the said agreement, each of them the said [*mortgagors*] hath executed a warrant

Recital of warrants of attor-

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

THEREFORE, THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of 218*l*.15*s*. paid to prior mortgagee, and of the sum of £—— paid to the said [*present mortgagee*] by the said [*mortgagor*], at the request of the said [*mortgagor*], on the execution of these presents, by the said [*present mortgagee*], (the receipt of which said sum of 218*l*.15*s*. and £—— the said [*present mortgagee*] doth hereby acknowledge, and of and from the same and every part thereof doth release and discharge the said [*mortgagor*], his heirs, executors, and administrators, by these presents,) the said [*mortgagor*] doth hereby grant unto the said [*present mortgagee*], his executors, administrators, and assigns, all that, &c. [*parcels*], with the appurtenances, to hold unto the said [*present mortgagee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for the term of —— years, subject to the proviso for redemption hereinafter contained, for securing the payment of the said sum of £—— and interest thereon at the rate of £—— per cent. per annum, on the —— day of —— next ensuing the date hereof, and so from thence

ation of the sum of 218*l.* 15*s.* of lawful British money, (being part of the sum of £300 so agreed to be advanced and lent

30. BY TENANT FOR LIFE AND REMAINDERMAN.

do or cause to be done in the premises, this shall be to you, and every of you, a sufficient warrant and authority. IN WITNESS &c.

Signed, sealed, and delivered by the above-named [*mortgagor*], in the presence of me [*attorney*], the attorney of the said [*mortgagor*], expressly named by him in that behalf, who, as such attorney, hereunto subscribe my name (*d*).

Attestation.

(*d*) [Vide stat. 1 & 2 Vict. c. 110, ss. 9 & 10, *ante*, Vol. 5, p. 29; and *Oliver* v. *Woodroffe*, 4 Mee. & Welsb. 650; *Cox* v. *Cannon*, 6 Scott, 349.]

DEFEAZANCE.

DEFEAZANCE ON WARRANT OF ATTORNEY.

MEMORANDUM, that the above-written warrant of attorney is given for securing the payment by the above-named [*mortgagor*], his heirs, executors, or administrators, unto the above-named [*mortgagee*], his executors, administrators, or assigns, of the principal and interest moneys, collaterally with a certain indenture of mortgage*, bearing even date with the above-written warrant of attorney, made between [*prior mortgagee*], of the first part; the said [*mortgagor*], of the second part; the said [*mortgagee*], of the third part; and [*trustee of term*], of the fourth part: whereby, and by virtue of a lease for a year precedent thereto, certain hereditaments were conveyed and assured unto and to the use of the said [*mortgagee*], his heirs, and assigns, subject to a proviso for the redemption of the said hereditaments, if the said [*mortgagors*], or either of them, or the heirs, executors, administrators, or assigns of them or either of them, did and should pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, at the common Dining-Hall of the Middle Temple, London, the sum of £300 of lawful British money, on the —— day of —— now next en-

* It is not essential to the validity of a warrant of attorney that collateral securities should be referred to in the defeazance. (*Sanson* v. *Goode*, 2 B. & Al. 568).

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

by the said [*present mortgagee*], as aforesaid), to the said [*prior mortgagee*], in hand, at or before the execution of these presents, paid by the said [*present mortgagee*], at the request and by the direction of the said [*mortgagors*], (testified by their severally executing these presents), and in full

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suing, with interest for the same from the day of the date of the said indenture, after the rate of five pounds per cent. per annum, without making any deduction out of the same sums and interest respectively for taxes or on any other account whatsoever. Now *it is hereby declared and agreed*, that no execution shall be issued upon the said judgment to be entered up by virtue of the above-written warrant of attorney, until default shall have been made in the payment of the whole or some part of the principal and interest moneys intended to be secured by the said indenture of mortgage, according to the proviso for redemption contained in the said indenture; But, in case default shall be made in payment of the said moneys, or any part thereof, then it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, immediately thereupon to issue execution, or cause execution to be issued, upon the said judgment, for such sum or sums of money as shall then be due for principal and interest, or either of them, by virtue of the said indenture of mortgage. And it is hereby declared and agreed, that it shall not be necessary for the said [*mortgagee*], his executors, administrators, or assigns, to revive, or cause to be revived, the said judgment, or to do any act, matter, or thing, for keeping the same on foot, although there may have been no proceeding thereon within one year immediately preceding the issuing of such execution.* And it is further declared and agreed, that, after the full payment of the sum and sums of money intended to be secured as aforesaid, and all the costs, charges, and expenses (if any) occasioned by the non-payment thereof, the said [*mortgagee*], his executors, administrators, or assigns, will or shall, on the request and at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, acknowledge satisfaction, or cause satisfaction to be acknowledged, upon the record of the judgment to be entered up by virtue of the said warrant of

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* [Vide *ante*, Vol. 5, p. 62.]

satisfaction and discharge of and for all moneys owing to him the said [*prior mortgagee*], for principal and interest, upon or by virtue of the hereinbefore in part recited indenture of mortgage of the —— day of ——; the receipt of which said sum of 218*l.* 15*s.*, he, the said [*prior mortgagee*], doth hereby acknowledge, and of and from the same doth acquit, release, and for ever discharge the said [*present mortgagee*], and also the said [*mortgagors*], and their respective heirs, executors, and administrators, by these presents; and also in consideration of the sum of 81*l.* 5*s.* of like lawful money, (being the residue of the said sum of £300 so agreed to be advanced and lent by the said [*present mortgagee*] as aforesaid), to the said [*mortgagors*], in hand at or before the execution of these present paid, advanced, and lent by the said [*present mortgagee*]; the receipt and payment of which several sums of 218*l.* 15*s.* and 81*l.* 5*s.* (making together the said sum of £300) they, the said [*mortgagors*], do hereby respectively acknowledge, and from the same respectively do, and each of them doth, acquit, release, and for ever discharge the said [*present mortgagee*], his heirs, executors, and administrators, by these presents; They, the said [*mortgagors*], *Have*, and each of them *Hath*, granted, bargained, sold, and released, and by these presents *Do*, and each of them *Doth*, grant, &c., unto the said [*present mortgagee*], and his heirs, (in the actual possession, &c.), ALL THAT (*describe parcels*); *And also* all houses, outhouses, edifices, buildings, barns, stables, shops, dove-cots, yards, gardens, ways, paths, passages, cellars, sollars, sewers, sinks, drains, lights, easements, commons, waters, profits, commodities, privileges, rights, members, and appurtenances whatsoever, to the said messuage, tenement, or inn, erections, buildings, hereditaments, and premises, or any part or parcel thereof, belonging or in anywise appertaining, or therewith now or at any time heretofore held, used, occupied, possessed, enjoyed, or accepted,

30. BY TENANT FOR LIFE AND REMAINDERMAN.

and of residue of 300*l.* advanced to mortgagor.

Mortgagors release to mortgagee,

Parcels.

General words.

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attorney, in such manner as the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall direct. As WITNESS the hands of the said parties, this —— day of ——."*

* As to the registration of warrants of attorney, *vide ante*, Vol. 2, p. 345, 2nd ed. The effect of bankruptcy upon judgments entered up on warrants of attorney has already been considered. *Vide ante*, Vol. 5, p. 55.

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

reputed, deemed, taken, or known, as part, parcel, or member thereof; *And* the reversion and reversions, remainder and remainders, rents, issues, and profits, of all and singular the same premises; *And also* all the estate, right, title, interest, inheritance, use, trust, property, possession, right and equity of redemption, benefit, advantage, claim, and demand whatsoever, both at law and in equity, of them the said [*mortgagors*] respectively, in, to, out of, or upon the said several hereditaments and premises, and every or any part or parcel thereof; And all deeds, evidences, and writings, relating to the title of the said hereditaments now in their respective custody or power; To HAVE AND TO HOLD the said messuage, or tenement or inn, erections, buildings, hereditaments, and all and singular other the premises hereinbefore mentioned to be hereby granted and released, or intended so to be, with their appurtenances, unto the said [*present mortgagee*] and his heirs, To THE ONLY PROPER USE and behoof of the said [*present mortgagee*], his heirs and assigns, for ever. *But subject, nevertheless,* to the proviso for redemption next hereinafter contained; (that is to say), PROVIDED ALWAYS, and it is hereby agreed and declared by and between the parties to these presents, that if the said [*mortgagors*], or one of them, or the heirs, executors, or administrators of them or one of them, do and shall pay, or cause to be paid, unto the said [*present mortgagee*], his executors, administrators, or assigns, at the common dining-hall of the Middle Temple, London, the said sum of £300 of lawful British money, on the —— day of —— now next ensuing, with interest for the same from the day of the date of these presents, after the rate of £5 per centum per annum, without making any deduction out of the same, or any part thereof, for or in respect of any taxes, [charges, assessments, or other impositions already taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed, upon the —— and premises hereby respectively granted and released, or upon the said sum of £300 and interest hereby secured, or any part of the same respectively, or upon the said [*present mortgagee*], his heirs, executors, administrators, or assigns, in respect of the same, by any present or subsequent act of Parliament or other authority whatsoever, or for or by reason] or on account of any other matter, cause, or thing whatsoever; then and from thenceforth, and at any time thereafter, he the said [*pre-*

All the estate, &c.

Habendum,

To the use of the mortgagee in fee.

Proviso for redemption.

sent mortgagee], his heirs or assigns, shall and will, at the request, costs, and charges of the said [*mortgagors*] or one of them, or the heirs, executors, administrators, or assigns of them or one of them, re-convey and re-assure all and singular the hereby granted and released premises with their appurtenances, unto and to the use of the said [*mortgagor tenant for life*] and his assigns, during the term of his natural life; and, after his decease, unto and to the use of the said [*mortgagor remainder-man*], his heirs and assigns, for ever, or to such of the same uses as shall be then subsisting or capable of taking effect, freed and discharged of and from all incumbrances to be created or suffered by him the said [*present mortgagee*], his heirs, executors, administrators, or assigns, or any of them, in the meantime, anything herein contained to the contrary thereof in anywise notwithstanding. AND the said [*mortgagors*], do for themselves, their heirs, executors, and administrators, jointly, and each of them doth for himself, his heirs, executors, and administrators, severally covenant and agree with the said [*present mortgagee*], his heirs, executors, administrators, and assigns, by these presents, that they the said [*mortgagors*], or one of them, or the heirs, executors, or administrators of them or one of them, will pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £300, together with interest for the same, at the time and place, and in manner hereinbefore mentioned and appointed for payment thereof, and without any deduction as aforesaid, according to the true intent and meaning of these presents; *And also*, that they the said [*mortgagors*], or one of them (*d*), [now are or is, at the time of the sealing and delivery of these presents, lawfully, rightfully, and absolutely seised of and interested in the —— and premises hereby granted and released, or intended so to be, with their and every of their appurtenances, of and for a good, sure, and perfect, absolute, and indefeasible estate of inheritance in fee-simple in possession, without any manner of condition, contingency, trust, power of revocation, or limitation of use or uses, or other restraint, matter, cause, or thing whatsoever,

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

Joint and several covenant by mortgagors to pay principal and interest;

that they stand seised,

(*d*) Observe the difference between the covenants entered into by a tenant for life and remainder-man being mortgagors, and where these persons are vendors, *post*, Vol. 8, p. 38, 1st ed.

30. BY TENANT FOR LIFE AND REMAINDER-MAN.

to alter, vary, change, charge, revoke, defeat, make void, or determine the same; *And also* that they the said [*mortgagors*], or one of them], now have or hath in themselves

and have power to convey;

or himself, good right, full power, and lawful and absolute authority, to grant and release the said —— and premises with their and every of their appurtenances, unto and to the use of the said [*present mortgagee*], his heirs and assigns, for ever, in manner aforesaid, and according to the

for quiet enjoyment after default,

true intent and meaning of these presents; *And also,* that after default shall happen to be made in the payment of the said sum of £300 or the interest thereof, or of any part thereof, contrary to the true intent and meaning of the proviso for redemption hereinbefore contained, it shall be lawful for the said [*present mortgagee*], his heirs or assigns, from time to time and at all times thereafter, peaceably and quietly to enter into, have, hold, and enjoy the —— and premises hereby granted and released, [or mentioned or intended so to be, and every part and parcel thereof, with their and every of their rights, members, and appurtenances], and to receive and take the rents and profits thereof for his and their own use and benefit without any interruption, claim, or demand whatsoever by the said [*mortgagors*], or either of them, or any other person or persons

free from incumbrances;

whomsoever; *And that* free and clear [and freely, and clearly, and absolutely acquitted, exonerated, and discharged, or otherwise by the said [*mortgagors*] or one of them, or the heirs, executors, or administrators of them or one of them, well and sufficiently saved, defended, and kept harmless and indemnified], of, from, and against all [and all manner of former and other gifts, grants, bargains, sales, jointures, dowers, wills, entails, leases, mortgages, debts, charges, and] incumbrances whatsoever [heretofore had, made, committed, or suffered by the said [*mortgagors*], or either of them, or any other person or persons whomsoever](*e*); *And also* that they the said [*mortgagors*], and

and for further assurance.

every other person whosoever having or lawfully claiming any estate, right, title, or interest, of, in, to, or out of the —— and premises hereby granted and released, or any part thereof, will, from time to time and at all times thereafter, at and upon the request of the said [*present*

(*e*) Here notice the land-tax, if the lands are subject to it, or any lease or tenancy, or any other charge or outstanding interest.

mortgagee], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*mortgagors*], or one of them, or the heirs, executors, or administrators of them or one of them, until the right or equity of redemption under or by virtue of these presents shall be foreclosed or otherwise barred, and afterwards at the costs and charges of the said [*present mortgagee*], his heirs or assigns, make, do, and execute, or cause and procure to be made and executed, all such further and other lawful acts, deeds, conveyances, and assurances in the law whatsoever, for the further and more effectually granting, releasing, assuring, and confirming the —— and premises hereby granted and released, with their and every of their appurtenances, unto and to the use of the said [*present mortgagee*], his heirs and assigns, for ever, in manner aforesaid, and according to the true intent and meaning of these presents, as by him the said [*present mortgagee*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised or advised and required. 30. BY TENANT FOR LIFE AND REMAINDER-MAN.

AND *it is hereby further declared and agreed*, that, until default shall be made in payment of the said sum of £300, and interest for the same, as aforesaid, or some part thereof respectively, in manner hereinbefore mentioned and appointed for payment of the same respectively, it shall be lawful for the said [*mortgagor tenant for life*], and his assigns, during his life, and, after his decease, for the said [*mortgagor remainder-man*], his heirs and assigns, peaceably and quietly to hold and enjoy the —— and premises hereby granted and released, [with their and every of their rights, members, and appurtenances], and to receive the rents and profits thereof, without any interruption, claim, or demand whatsoever, by the said [*present mortgagee*], his heirs or assigns, or any other person or persons whomsoever, lawfully claiming by, from, under, or in trust for him or them. Agreement for quiet enjoyment by mortgagor until default.

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement, and in consideration of the sum of 218*l.* 15*s.* so paid to the said [*prior mortgagee*] by the said [*present mortgagee*], as aforesaid; and also, in consideration of the further sum of 10*s.* of lawful money aforesaid to the said [*prior mortgagee*] in hand, at or before the execution of these presents, paid by the said [*trustee of term*], the receipt whereof is hereby acknowledged, he the said [*prior mortgagee*], at the request and by the direction of the said Further *testatum*.

Prior mortgagee, by the direction of mortgagor, assigns to a trustee for the present mortgagee,

30. BY TENANT FOR LIFE AND REMAINDERMAN.

[*mortgagors*], and on the nomination of the said [*present mortgagee*] (testified by their severally executing these presents), *Hath* bargained, sold, assigned, transferred, and set over, and by these presents *Doth* bargain, &c., unto the said [*trustee of term*], his executors, administrators, and assigns, ALL THOSE the —— and premises hereinbefore particularly described, and all and singular other the premises demised to the said [*prior mortgagee*], his executors, administrators, and assigns, in and by the above-recited indenture of demise or mortgage, dated the —— day of ——, for the term of one thousand years, as aforesaid, and every part and parcel thereof, with their and every of their appurtenances: *And also* all the estate, right, title, interest, trust, property, possession, term and terms of years yet to come and unexpired, benefit, advantage, claim, and demand whatsoever, both of law and in equity, of him the said [*prior mortgagee*], in, to, out of, or upon, the same premises, and every or any part and parcel thereof: TO HAVE AND TO HOLD the said ——, and all and singular other the premises hereby bargained, sold, and assigned, or intended so to be, with their and every of their appurtenances, unto the said [*trustee of term*], his executors, administrators, and assigns, henceforth, for and during all the residue now to come and unexpired of the term of one thousand years granted to the said [*prior mortgagee*] in and by the above-recited indenture of mortgage as aforesaid; and for all other his estate, term, and interest (if any) therein; *But* UPON TRUST, nevertheless, for the said [*present mortgagee*], his executors, administrators, and assigns, for the better and more effectually securing to him and them the repayment of the said sum of £300, and interest for the same, at such time and place, and in such manner as hereinbefore is mentioned and appointed for that purpose; And, subject thereto, IN TRUST to permit and suffer the said term of one thousand years to attend, wait upon, go along with, and be subservient to, the freehold and inheritance of the premises therein comprised, in order to protect the same from all mesne charges and incumbrances (if any such there be); and upon or for no other trust, intent, or purpose whatsoever. AND the said [*prior mortgagee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*trustee of term*], his executors, administrators, and assigns, that he the said [*prior mortgagee*] hath not heretofore made, done,

Premises comprised in recited mortgage,

and all the estate, &c.

Habendum for the residue of term of one thousand years;

Upon trust for present mortgagee to secure mortgage-money;

And, subject thereto, to attend the inheritance.

Covenant by prior mortgagee that he has not incumbered.

or committed, or knowingly permitted, any act, deed, matter, or thing whatsoever, by means whereof the —— and premises hereby assigned, or any part thereof, are or is charged, incumbered, or prejudicially affected, in any manner howsoever. IN WITNESS &c.

30. BY TENANT FOR LIFE AND REMAINDERMAN.

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31. MORTGAGE *comprising* FREEHOLDS, LEASEHOLDS, *and* COPYHOLDS (*a*); *being an* APPOINTMENT *and* RELEASE *in Fee of the* FREEHOLDS, *an* UNDER-LEASE (*b*) *of the* LEASEHOLDS, *and a* COVENANT *to* SURRENDER *the* COPYHOLDS, *with usual Covenants and* APPOINTMENT *of* RECEIVER. *(Variation where the Premises are made* SALEABLE *in default of Payment).*

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

THIS INDENTURE, &c., BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagor's trustee*], of &c., of the second part; [*mortgagee*], of &c., of the third part; and [*receiver*], of &c., of the fourth part. *(Recite conveyance of freeholds to uses in favour of the mortgagor to prevent dower; demise of leaseholds to mortgagor, and surrender of copyholds to the use of mortgagor in fee, and his admission thereto).* AND WHEREAS the said [*mortgagee*], at the request of the said [*mortgagor*], hath agreed to lend and advance to him the sum of £—— at interest, on the security of a mortgage of the said freehold, leasehold, and copyhold messuages, lands, and hereditaments. NOW, THEREFORE, THIS INDENTURE WITNESSETH, that, in consideration of the sum of £—— of lawful British money, lent and advanced by the said [*mortgagee*] to the said [*mortgagor*], at or immediately before the execution of these presents, the receipt of which said sum the said [*mortgagor*] doth hereby acknowledge, and therefrom doth acquit, release, and for ever discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns, he the said [*mortgagor*], in exer-

Parties.

Recital of agreement for loan.

Testatum.

In consideration of principal sum, mortgagor appoints—

(*a*) As to the principle of contribution where estates belonging to different persons are included in one mortgage, *vide ante*, Vol. 5, p. 374.

(*b*) As to mortgages by way of under-lease, *vide ante*, Vol. 5, pp. 508, 657, 660.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

cise and execution of the aforesaid power or authority so reserved to him by the hereinbefore in part recited indenture of release, and of all other powers and authorities in anywise enabling him in this behalf, *Doth* hereby direct, limit, and appoint, that the said ——, and other the hereditaments hereinafter described, and hereby released, or intended so to be, together with all the rights, members, and appurtenances thereunto belonging, shall henceforth remain, continue, and be *To the use* of the said [*mortgagee*], his heirs and assigns, for ever; subject, nevertheless, to the proviso or agreement for redemption of the said premises hereinafter contained. AND THIS INDENTURE FURTHER WITNESSETH (*c*), that, for the considerations hereinbefore expressed, and by way of further or auxiliary assurance only, and in consideration of the sum of 10*s.* of lawful money aforesaid, paid by the said [*mortgagee*] to each of them, the said [*trustee*] and [*mortgagor*], respectively, at or immediately before the execution of these presents, the several receipts whereof are hereby acknowledged, the said [*trustee*], at the request and by the direction of the said [*mortgagor*], testified by his executing these presents, *Hath* bargained, sold, and released, and by these presents *Doth* bargain, sell, and release; and the said [*mortgagor*] *Hath* granted, bargained, sold, released, and confirmed, and by these presents *Doth* grant, bargain, sell, release, and confirm unto the said [*mortgagee*] and his heirs, (in the actual possession of the said [*mortgagee*] now being, by virtue of a bargain and sale to him thereof made by the said [*trustee*] and [*mortgagor*], in consideration of 5*s.* a-piece, by indenture bearing date the day next before the day of the date of these presents, for one year, to commence from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession), ALL THAT, (*describe freehold parcels*); together with all houses, &c.; And all the estate &c.; And all deeds, &c., TO HAVE AND TO HOLD the said —— and hereditaments, and other the premises hereby released, or intended so to be, and every part and parcel of the same, with their appurtenances, unto the said [*mortgagee*] and his heirs, TO THE ONLY USE of the said [*mortgagee*], his heirs,

To the use of mortgagee in fee.

Further *testatum*.

Mortgagor and his trustee release.

Parcels.

Habendum,

To the use of mortgagee in fee.

(*c*) As to the practice of adding a release to an appointment in these cases, *vide ante*, Vol. 5, p. 560.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

and assigns, for ever; *subject, nevertheless,* to the proviso or agreement for redemption hereinafter contained. AND THIS INDENTURE ALSO WITNESSETH, that, for the considerations hereinbefore expressed (*d*), he the said [*mortgagor*], *hath* granted, bargained, sold, and demised, and by these presents *doth* grant, bargain, sell, and demise unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT, (*describe leasehold parcels*); and all other the premises (if any) comprised in and demised by the hereinbefore in part recited indenture of lease, of or about the —— day of ——, and every part and parcel of the same, with their appurtenances, TO HAVE AND TO HOLD the said ——, and all other the leasehold premises hereby demised, or intended so to be, and every part and parcel of the same, with their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, henceforth during all the residue now to come and unexpired of the term of —— years granted by the hereinbefore in part recited indenture of lease, except the last day of the said term; and for all other the estate, term, and interest (if any) of the said [*mortgagor*] therein, except the last day of such estate, term, and interest; *subject, nevertheless,* to the proviso or agreement for redemption hereinafter contained. AND THIS INDENTURE YET FURTHER WITNESSETH, that, for the considerations hereinbefore expressed, he the said [*mortgagor*] *Doth* hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagee*], his heirs and assigns, that he the said [*mortgagor,*] or his heirs, shall and will, at his or their own costs and charges, at the next general court, or in the meantime at some special court to be holden in and for the said manor of ——, in the county of ——, well and effectually surrender, or cause to be surrendered, into the hands of the lord or lords, lady or ladies, of the said manor, according to the custom of the same manor, ALL THAT the said copyhold or customary (*describe copyhold parcels*) together with all ways, waters, watercourses, paths, passages, trees, woods, underwoods, commons, commonable rights, hedges, ditches, fences, liberties,

Mortgagor demises to mortgagee,

—premises comprised in lease.

Habendum,

For all the residue of term of lease, except the last day.

Further *testatum.*

Mortgagor covenants to surrender copyholds.

General words.

(*d*) As a pecuniary consideration (*i. e.* the sum lent) is stated in the anterior part of the deed to have passed from the mortgagee to the mortgagor, the insertion of a nominal pecuniary consideration between the same parties seems to be superfluous.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

privileges, profits, commodities, advantages, and appurtenances whatsoever, to the copyhold —— and premises hereby covenanted to be surrendered, or intended so to be, or to any of them, or to any part thereof respectively belonging, or in anywise appertaining: *And* the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the said copyhold —— and premises;

And all the estate, &c.

AND all the estate, right, title, interest, use, trust, inheritance, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever of him the said [*mortgagor*], in, to, out of, or upon the copyhold —— and premises hereby covenanted to be surrendered, or intended so to be, with their appurtenances (*e*),

To the use of mortgagee in fee.

To the use of the said [*mortgagee*], his heirs and assigns, at the will of the lord, according to the custom of the said manor at and under the customary rents and services therefore due, and of right accustomed; *And that* in the meantime, and until such surrender shall be made, and the said [*mortgagee*], or his heirs, shall be admitted tenant or tenants of the said copyhold premises, he the said [*mortgagor*] and his heirs shall and will stand and be seised of the same copyhold —— and premises, with their appurtenances, upon trust for the said [*mortgagee*], his heirs and assigns; *subject, nevertheless,* to the proviso or agreement for redemption

Proviso for redemption.

hereinafter contained; (that is to say), PROVIDED ALWAYS, *and it is hereby declared and agreed by and between the said parties to these presents,* that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, do and shall pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, at or in the Royal Exchange in the City of London, on the —— day of —— next ensuing, the sum of £—— of lawful British money, with interest for the same from the day of the date of these presents, after the rate of £5 for every £100 by the year (*f*); and if the said [*mortgagor*], his heirs, executors, or administrators, do and shall on demand pay

(*e*) If the surrender is made to such uses as the mortgagee shall by deed appoint, then vary the deed, *ut ante*, p. 19.

(*f*) If the mortgage is made by *assignment* of the leaseholds, instead of an underlease, and a power of sale, *ut post*, p. 107, is to be introduced, add—

Variation, where leaseholds are assigned.

"and if the said [*mortgagor*], his heirs, executors, or administrators shall henceforth pay the rent, and observe and

unto and reimburse the said [*mortgagee*], his executors, administrators, or assigns, all such sums of money (if any) as he or they shall have paid and expended, as and for the fine on his or their admission to the copyhold —— and premises hereby covenanted to be surrendered, or for other the fines, duties, and services henceforth to become due in respect thereof, with interest thereon after the rate aforesaid, (such sum or sums of money, together with the sum of £—— hereby intended to be secured, not exceeding in the whole the principal sum of £——), and do and shall make the said payments respectively without any deduction whatsoever [out of the same or any part thereof, for or in respect of taxes or impositions already charged or imposed, or hereafter to be charged or imposed, upon the freehold, leasehold, and copyhold —— and hereditaments respectively hereby intended and covenanted to be assured, or any of them, or upon the said [*mortgagee*], his heirs, executors, administrators, or assigns, for or in respect thereof, by authority of Parliament or otherwise howsoever], then and immediately thereupon, he the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall and will, upon the request and at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, release, assign, surrender, and re-assure the freehold, leasehold, and copyhold —— and hereditaments respectively hereby released, demised, and covenanted to be surrendered, or otherwise assured, or intended so to be, with their respective appurtenances, unto and to the use of, or in trust for, the said [*mortgagor*], his heirs, executors, administrators, and assigns, or unto such person or persons as he or they shall direct or appoint, free from all incumbrances to be created by the said [*mortgagee*], his heirs, executors, administrators, or assigns, in the meantime (*g*). AND the

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

Covenant by mortgagor to

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perform the covenants, by and in the hereinbefore in part recited indenture of lease respectively reserved and contained, and which on the lessee's part are or ought to be paid, observed, and performed;"

signed upon trust for sale.

(*g*) If a power of sale is intended to be given in default of payment, proceed as follows—

"But in case default should be made by the said [*mortgagor*], his heirs, executors, administrators, or assigns, in payment of the said sum of £—— or the interest thereon,

Trust for sale after default.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

said [*mortgagor*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the

pay mortgage-money.

or any part thereof respectively, at the time and in manner hereinbefore appointed for the payment thereof; and if the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall at any time or from time to time after such default shall be made, give or deliver to the said [*mortgagor*], his heirs or assigns, with respect to the said freehold and copyhold hereditaments, and unto the said [*mortgagor*], his executors, administrators, or assigns, with respect to the said leasehold premises, or leave at his or their usual place or places of abode, notice in writing, under the hand or hands of the said [*mortgagee*], his heirs, executors, administrators, or assigns, of his or their intention to proceed to a sale of the several hereditaments and premises respectively hereby released, demised, and covenanted to be surrendered, or intended so to be, or some part or parts thereof respectively, in the event of the non-payment of the whole of the said sum of £——, and the interest thereon, at the end of six calendar months from the time of giving or leaving such notice, or at the end of any longer period, to be specified in the said notice; And if the said sum of £——, or the interest thereon, or any part thereof respectively shall remain unpaid at the expiration of such period, or in case the said [*mortgagor*], his heirs, executors, or administrators, shall, while he or they shall be in the possession of or in the receipt of the rents and profits of the said hereditaments, neglect or fail to pay the rent reserved by the hereinbefore-recited indenture of lease for the period of three calendar months after the same shall have accrued, or shall neglect or fail for any period to observe and perform the covenants contained in the same indenture, and which on the lessee's part ought to be observed and performed*, or shall neglect or fail, when

* Although, where the mortgage is by way of underlease, and the mortgagee therefore contracts no personal liability to the covenants of the lease, it is not necessary to make the performance of these covenants a condition precedent to the redemption of the mortgaged property, since, if the mortgagee gets his money, he has no reason to complain of a forfeiture having been incurred by non-performance of the covenant, (*vide ante*, p. 106); yet, where there is a power of sale, it seems proper

said [*mortgagee*], his executors, administrators, and assigns, that he the said [*mortgagor*], his heirs, executors, or ad- 31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

thereunto requested in writing, to pay unto or reimburse the said [*mortgagee*], his executors, administrators, or assigns, all such sums of money (if any) as he or they shall have paid or expended for all or any of the purposes mentioned in the proviso or agreement for redemption hereinbefore contained, and interest thereon as aforesaid; Then, and in all or any or either of the said cases, and in case of such neglect or failure as aforesaid (without any such notice as hereinbefore mentioned), it shall be lawful for the said [*mortgagee*], his heirs, or assigns, as to the said freehold and copyhold hereditaments, and for him, his executors, administrators, or assigns, as to the said leasehold premises, at any time or times thereafter, so long as the same moneys or any part thereof respectively shall remain unpaid, in the discretion and of the absolute authority of the said [*mortgagee*], his heirs, executors, administrators, or assigns, and without the necessity of renewing or reviving the said notice, or of obtaining any further consent or concurrence on the part of the said [*mortgagor*], his heirs, executors, administrators, or assigns, and notwithstanding the acceptance of interest after the giving of such notice as aforesaid, to make sale and absolutely dispose of the messuages, closes, lands, tithes, hereditaments, and premises hereby respectively released, demised, and covenanted to be surrendered, or intended so to be, or any part or parts thereof respectively, with their appurtenances, either together or in parcels, and either by public auction or private contract, at such price or prices as can be reasonably gotten for the same with liberty to purchase in the same at any auction or auctions, as often as it shall be deemed expedient so to do, and to resell the same hereditaments, or any part thereof, by public auction or private contract, without being answerable for any loss or diminution of price to be occasioned thereby, and also to make and enter into any special conditions and stipulations respecting the title to be required

to make the premises saleable on this event, because, though the mortgagee incurs no personal responsibility thereby, his security becomes deteriorated. The addition, *ante*, p. 106, should then be made to the proviso for redemption.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

ministrators, will pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the

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by any purchaser, or of the mode of paying the purchase-money or otherwise, and also to rescind or vary the terms of any contract for sale which may have been entered into; and to convey, assign, surrender, and assure the said hereditaments, when sold, unto the purchaser or purchasers thereof, and in such manner as he, she, or they shall order or direct, absolutely released and discharged from all benefit and equity of redemption under or by virtue of these presents, and to receive the moneys to arise from the sale or sales; AND UPON TRUST, by, with, or out of the moneys to arise from such sale or sales as aforesaid, or by, with, or out of the rents, issues, and profits (if any) of the said several hereditaments and premises, until the sale thereof, (and which rents and profits the said [*mortgagee*], his heirs or assigns, is or are to be at liberty to receive without any such previous notice as is hereinbefore provided in reference to any sale or sales as aforesaid), in the first place, to satisfy and discharge all the expenses incident to such sale or sales, and to the execution of these present trusts; and in the next place to retain, or pay and satisfy unto himself or themselves, the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £——, or so much thereof as shall then remain unpaid, together with all interest which shall be then due for the same, and such sum and sums of money, costs, losses, damages, and expenses, (if any), as the said [*mortgagee*], his executors, administrators, or assigns, shall pay, sustain, or incur, by reason of the non-payment of the same sum and interest, at the time and in manner hereinbefore appointed for payment thereof, or by reason of the breach or non-performance by the said [*mortgagor*], his heirs, executors, or administrators, of any of the covenants and agreements on the part of him the said [*mortgagor*] herein contained, (subject, as to the amount thereof, to the limitation aforesaid), with interest, at the rate of £5 per cent. per annum on all such moneys from the time of the payment thereof respectively; And in case, after full payment and satisfaction unto the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £—— and interest, and arrears of interest, and all the several costs, losses, damages,

Declaration of trust of moneys to arise from sale.

said principal sum of £——, and interest for the same after the rate aforesaid, at the place and on or at the day and time hereinbefore appointed for payment of the same respectively, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents; And that he the said [*mortgagor*], his heirs, executors, or administrators, will, so long as any sum or sums of money shall remain owing upon the security hereby made, pay the rent, and perform the covenants and agreements on the lessee's part

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

And to pay the rent and perform the covenants of the lease.

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and expenses, and interest thereon as aforesaid, either by the means aforesaid, or by any other means, any residue or surplus of the moneys to arise from the sale or sales aforesaid, shall remain in the hands of the said [*mortgagee*], his heirs, executors, administrators or assigns, unapplied to any of the purposes aforesaid, Then UPON TRUST to pay such residue or surplus unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, for his or their own absolute use and benefit; but in case the sum of £—— and all interest for the same, and all such costs, losses, damages, expenses, and interest, if any, as aforesaid, shall be fully paid and satisfied by the said [*mortgagor*], his heirs, executors, administrators, or assigns, before the whole of the said premises shall have been sold under the trust aforesaid, Then UPON TRUST, on the request and at the costs and charges of the said [*mortgagor*], his heirs or assigns, (with respect to the said freehold and copyhold premises), and of him the said [*mortgagor*], his executors, administrators, or assigns, (with respect to the said leasehold premises), to reconvey, surrender, assign, and reassure the said several hereditaments and premises respectively, or so much or such part or parts thereof as shall remain unsold, unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, according to the nature and quality thereof respectively, or to such person or persons, and in such manner, as he or they shall direct, free from all estates, rights, titles, charges, and incumbrances to be made, created, or occasioned by the said [*mortgagee*], his heirs, executors, administrators, or assigns, in the meantime; And upon or for no other trust, intent, or purpose whatsoever. (*Add indemnities to purchasers, ut ante*, p. 88.)

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

respectively reserved and contained by and in the above-recited indenture of lease, and which shall accrue due, and ought to be performed, during the period that the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall be in the possession of, or in the receipt of the rents and profits of the said leasehold premises; *And also* will pay the fine and other expenses to become payable on the admission of the said [*mortgagee*], his heirs or assigns, to the copyhold —— and premises hereby covenanted to be surrendered; and will also pay, render, and perform all other the fines, rents, and services, which ought henceforth to be paid, rendered, and performed, for or in respect of the same, during so long as the said [*mortgagor*], his heirs or assigns, shall be in the possession of, or the receipt of the rents and profits of, the said copyhold premises; And shall and will save harmless, and keep indemnified, the said [*mortgagee*], his heirs, executors, administrators, and assigns, from and against the payment and performance of the same fines, rents, and services respectively; And also from and against all actions, suits, forfeitures, costs, charges, damages, and expenses to be brought against, or incurred or paid by the said [*mortgagee*], his heirs, executors, administrators, or assigns, and all distresses, seizures, executions, and other proceedings which shall or may be taken or instituted against the said copyhold premises, by reason or on account of the non-payment and non-performance of the same fines, costs, and services respectively, or otherwise in relation thereunto. *And also*, that he the said [*mortgagor*], his heirs, executors, or administrators, shall and will, on demand, pay unto and reimburse the said [*mortgagee*], his executors, administrators, or assigns, all such sum and sums of money as he or they shall at any time hereafter pay or expend in and about the payment, performance, and observance of all or any of the rents, fines, duties, and services henceforth to become due and payable, and which ought to be paid, observed, and performed in respect of the said leasehold and copyhold premises, or any part thereof, whether before or after he or they shall have entered into the possession of the same premises, (but not exceeding the amount aforesaid), with interest for the same sums of money at the rate of £5 per centum per annum from the time or respective times of the same being so paid or expended as

And pay the fines, &c., of the copyholds.

To reimburse mortgagee sums expended in payment of rents, &c.

aforesaid. And the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his heirs and assigns, for and in respect of the freehold and copyhold hereditaments respectively hereby released and covenanted to be surrendered, or intended so to be, and with the said [*mortgagee*], his executors, administrators, and assigns, for and in respect of the leasehold premises hereby demised or intended so to be, in manner following, (that is to say), that the said [*mortgagor*] and [*trustee*] are now seised to them and their heirs, or one of them is seised to him and his heirs, of the freehold —— and hereditaments hereby released, or intended so to be, with the appurtenances, for a lawful, absolute, and indefeasible estate of inheritance in fee-simple in possession; *And also*, that the hereinbefore in part recited indenture of lease, bearing date on or about the —— day of ——, is a good, valid, and subsisting lease in the law, for the residue of the said term of —— years, and is in nowise forfeited, surrendered, determined, or made void or voidable, and that the rent and covenants respectively reserved and contained by and in the same indenture of lease on the lessee's part to be paid and performed, have been respectively duly paid and performed up to the day of the date of these presents; *And that* the said [*mortgagor*] is also now seised to him and his heirs of, or absolutely entitled to, the copyhold —— and premises hereby covenanted to be surrendered, or intended so to be, with their appurtenances, for an absolute and indefeasible estate of inheritance in possession, at the will of the lord, according to the custom of the said manor of ——; *And also*, that the said [*mortgagor*] and [*trustee*], or one of them, as to the said freehold hereditaments and the said [*mortgagor*], as to the said leasehold and copyhold premises, now have or hath in themselves or himself good right and absolute authority to grant, demise, surrender, and assure, or to cause to be granted, demised, surrendered, and assured, all and singular the freehold, leasehold, and copyhold —— and premises hereinbefore expressed to be hereby released, demised, and covenanted to be surrendered respectively, with their respective appurtenances, unto or to the use and benefit of the said [*mortgagee*], his heirs, executors, administrators, and assigns respectively, for all the estates, terms, and interests therein, for which the same

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

Covenants by mortgagor;

that mortgagor and his trustee are seised in fee of the freeholds;

that lease is valid;

that mortgagor is seised of copyholds;

that he and his trustee have power to release, &c.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

respectively are, or are intended to be, hereby released, demised, and covenanted to be surrendered in manner aforesaid, according to the true intent and meaning of these presents; *And further*, that, after default shall have been made in payment of the said sum of £—— and interest, or other the moneys hereinbefore mentioned, on or at the day or time hereinbefore appointed for the payment thereof, contrary to the proviso or agreement for redemption hereinbefore contained, or if the said [*mortgagor*], his executors, administrators, or assigns, shall not pay and perform the rents and covenants respectively reserved and contained by and in the hereinbefore in part recited indenture of lease, and which on the lessee's part are or ought to be paid and performed, or if the said [*mortgagor*], his heirs or assigns, shall not pay, render, and perform, the fines, rents, suits, and services, to accrue and become due and payable in respect of the said copyhold premises, then, and in either of the said cases, and immediately thereupon, it shall be lawful for the said [*mortgagee*], his heirs, executors, administrators, or assigns respectively, from time to time and at all times hereafter, during the continuance of the estates, terms, and interests, respectively hereby released, granted, and covenanted to be surrendered, or otherwise assured, or intended so to be, [but as to the said copyhold premises, not until he the said [*mortgagee*], his heirs or assigns, shall have been duly admitted as tenant or tenants thereof,] peaceably and quietly to enter into and upon, and hold, possess, and enjoy the freehold, leasehold, and copyhold —— and premises respectively hereby released, demised, and covenanted to be surrendered or otherwise assured, or intended so to be, with their respective appurtenances, and to receive and take the rents and profits thereof respectively, without any hinderance, interruption, or denial whatsoever, from or by the said [*mortgagor*], his heirs, executors, or administrators, or any other persons whomsoever: *And that* free and clear [and freely, clearly, and absolutely acquitted, released, exonerated, and discharged, or otherwise by him the said [*mortgagor*], his heirs, executors, and administrators, well and sufficiently kept harmless and indemnified of,] from and against all [and all manner of former and other grants, bargains, sales, mortgages, demises, appointments, statutes, judgments, recognizances, extents, titles, liens,] charges, and incumbrances

for quiet enjoyment after default;

free from incumbrances;

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

whatsoever, at any time or times heretofore, or to be from time to time hereafter, had, made, done, occasioned, permitted, or suffered by the said [*mortgagor*], or his heirs, executors, or administrators, or any other person or persons whomsoever, (except, as to the leasehold premises hereby demised, the rent and covenants respectively reserved and contained by and in the hereinbefore in part recited indenture of lease, bearing date on or about the —— day of ——, and which on the lessee's part are or ought to be henceforth paid and performed; and except, as to the said copyhold premises, the rents, fines, suits, and services, henceforth to become due in respect thereof, and of right accustomed, and except also, as to the said freehold and leasehold premises, an indenture of lease, dated the —— day of ——, granted by the said [*mortgagor*], to the said [*lessee*], of the said premises respectively, for the term of —— years, at the yearly rent of £——); *And moreover*, that he the said [*mortgagor*], and his heirs, executors, and administrators, and every other person whosoever lawfully and equitably or rightfully claiming or to claim any estate, right, title, trust, charge, or interest, in, to, out of, or upon the freehold, leasehold, and copyhold —— and premises hereby respectively released, demised, and covenanted to be surrendered, or otherwise assured, or intended so to be, or any part or parts of the same, (except the persons respectively whose estates and interests are hereinbefore excepted), will, from time to time, and at all times hereafter, upon every request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, until the right or equity of redemption in the said premises respectively shall be released or barred (*h*), and afterwards at the costs and charges of the said [*mortgagee*], his heirs, executors, administrators, or assigns, make, do, execute, and perfect, or cause to be made, done, executed, and perfected, all such further lawful acts, deeds, conveyances, demises, surrenders, and as-

and for further assurance.

(*h*) If a power of sale is introduced, add—

"or, until the said hereditaments respectively shall have been sold and conveyed under or by virtue of the trust for sale hereinbefore contained."

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

surances in the law whatsoever, for the more effectually conveying, releasing, surrendering, confirming, or otherwise assuring the freehold and copyhold —— and hereditaments respectively hereby released, or otherwise assured, or covenanted to be surrendered, or intended so to be, with the appurtenances, unto and for the use of the said [*mortgagee*], his heirs and assigns, for ever; and also for demising or otherwise assuring the leasehold —— and premises hereby demised, or otherwise assured or intended so to be, with the appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, during all the residue which shall be then unexpired of the term of —— years, except the last day thereof, hereby granted, or intended so to be, according to the true intent and meaning of these presents; and subject to such right or equity of redemption (if any) as the said hereditaments respectively shall be subject and liable to, by virtue of the proviso or agreement for redemption hereinbefore contained (*i*), as by the said [*mortgagee*], his heirs, executors, administrators, and assigns, respectively, or his or their counsel in the law, shall be reasonably advised and required. *Provided always, and it is hereby declared and agreed by and between the said parties hereto,* that, until default shall happen to be made in payment of the said sum of £—— and interest, or other the moneys hereinbefore mentioned, contrary to the proviso or agreement for redemption hereinbefore contained; and while the said [*mortgagor*], his heirs, executors, or administrators, shall duly pay and perform the several rents, covenants, fines, suits, and services hereinbefore covenanted by him to be respectively paid and performed, it shall be lawful for the said [*mortgagor*], his heirs, executors, administrators, and assigns, to hold and enjoy the freehold, leasehold, and copyhold —— and premises, respectively hereby released, demised, and covenanted to be surrendered, or otherwise assured, or intended so to be, with their appurtenances; and to receive and take the rents and profits thereof for his and their own use and benefit, without any interruption or denial from or by the said [*mortgagee*], his heirs, executors, administrators, or assigns, or from or by any other person

Proviso for quiet enjoyment by mortgagor until default.

(*i*) If there is a trust for sale, it is better to omit these words.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

or persons lawfully claiming through, under, or in trust for him or them, anything hereinbefore contained to the contrary thereof in anywise notwithstanding (*k*). AND WHEREAS, upon the treaty for the loan of the said sum of £——, it was agreed that the regular payment of the interest thereon, so long as the same should remain upon this security, should be further secured by the appointment of a receiver, in manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, the said [*mortgagor*] and [*mortgagee*] *Do* and each of them *Doth* hereby depute, constitute, and appoint the said [*receiver*], to be receiver, agent, and attorney of the said [*mortgagor*] and [*mortgagee*], and each of them, in the names or name of them, or either of them, or otherwise to ask, demand, and receive of and from all the present and future tenants and occupiers of the several freehold, leasehold, and copyhold —— and hereditaments respectively hereby released, demised, and covenanted to be surrendered, or intended so to be, all the yearly rents, issues, and profits now due, and hereafter to become due, for or in respect of the same premises; and in default of payment thereof, to use and exercise all such remedies, by entry, distress, or otherwise howsoever, and generally to do and perform all such other acts as shall be requisite or expedient for the receiving and recovering of the said rents, issues, and profits. AND the said [*mortgagor*] and [*mortgagee*] respectively do hereby direct and require the several tenants and occupiers aforesaid to pay unto the said [*receiver*] all the yearly rents and reservations due and to become due from them respectively, for the said premises, or any part thereof respectively, and hereby declare that the receipts of the said [*receiver*] shall be effectual discharges for the same. AND *it is hereby declared and agreed*, that the said rents, issues, and profits, when so received, shall be applied and disposed of by the said [*receiver*]

Recital of agreement for the appointment of a receiver.

Further *testatum*.

Mortgagor and mortgagee appoint receiver.

Rents how to be applied.

(*k*) If there is a trust for sale, add—

"Provided, nevertheless, that nothing in the proviso or declaration lastly hereinbefore contained shall extend to prejudice or affect any purchaser or purchasers claiming under or by virtue of the trust for sale hereinbefore contained.

Variation, where there is a trust for sale.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

in manner following, (that is to say), in the first place, in paying and discharging all taxes, rates, and outgoings, payable in respect of the said premises; and in the next place, in retaining and satisfying all necessary and reasonable expenses attending the collection, receipt, or getting in of the said rents, issues, and profits; and also a salary, after the rate of £—— per annum, for his time and trouble, for so long a time as he shall be continued receiver for the purposes aforesaid; and in the next place, in paying and satisfying unto the said [*mortgagee*], his executors, administrators, or assigns, the interest to accrue due in respect of the said sum of £——, by equal half-yearly payments, on the said —— day of —— and —— day of ——, in every year, clear of all deductions for taxes or otherwise; and in case, after making the several payments aforesaid, there shall be any residue or surplus of such rents and profits, then (subject and without prejudice to the right of the said [*mortgagee*], his executors, administrators, or assigns, to have such residue or surplus applied in or towards payment of the principal of the said mortgage debt) the same shall be paid by the said [*receiver*] to the said [*mortgagor*], his heirs, executors, administrators, or assigns, according to the nature and quality of the hereditaments whence the same shall have arisen, or as he or they respectively shall direct, for his and their own use and benefit. AND the said [*receiver*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his executors, administrators, and assigns; and also separately with the said [*mortgagor*], his heirs, executors, administrators, and assigns, that the said [*receiver*] shall and will, from time to time, so long as he shall be continued receiver or attorney for the purposes aforesaid, duly pay, apply, and dispose of the rents, issues, and profits, which shall be received by him as aforesaid, for the purposes and in manner hereinbefore mentioned, and according to the true intent and meaning of these presents. AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his executors, administrators, and assigns, that, in case the said [*receiver*], or any future receiver or receivers to be appointed under this present provision, shall at any time or times, so long as the said sum of £——, or the interest thereon, or any part

Covenant by receiver to apply same accordingly.

Covenant by mortgagor to concur in supplying vacancies in receivership;

thereof respectively, or any other of the moneys hereby intended to be secured, shall continue charged upon the said hereditaments and premises, die, or become unwilling or unable to act as such receiver, attorney, or agent, as aforesaid, then, and so often as the same shall happen, the said [*mortgagor*], or his heirs, executors, administrators, or assigns, shall and will, within the space of one calendar month next thereafter, appoint and authorize, or join and concur with the said [*mortgagee*], his heirs, executors, administrators, or assigns, in appointing or authorizing; And in default thereof, that it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, without the concurrence of the said [*mortgagor*], his heirs, executors, or administrators, to appoint and authorize some other fit and proper person, to be approved of by the said [*mortgagee*], his executors, administrators, or assigns, to be receiver, agent, and attorney, in the place of the receiver, agent, or attorney, so dying or becoming unwilling or unable to act as aforesaid, for the purposes aforesaid; and every such person to be so appointed shall be entitled to exercise all the powers and authorities hereinbefore given to the said [*receiver*]: *And also* that so long as the said sum of £——, or the interest thereon, or any other of the moneys hereby intended to be secured, or any part thereof respectively, shall continue charged on the said hereditaments and premises, the said [*mortgagor*], his heirs, executors, or administrators, shall not nor will revoke or alter the appointment hereby made, or any future appointment or appointments of a receiver, to be made under the provisions hereinbefore contained, without the consent in writing of the said [*mortgagee*], his executors, administrators or assigns, first obtained for that purpose, nor receive or collect any of the rents, issues, or profits of the said premises; or in anywise prevent or obstruct the said [*receiver*], or any such future receiver or receivers as aforesaid, in or from receiving or recovering the same, or any part thereof. AND *it is hereby further declared and agreed*, that the said [*receiver*], or any future receiver to be appointed as aforesaid, shall not be answerable or accountable for any misfortune, loss, or damage, which may happen in or about the execution of his office of receiver, unless the same shall happen by or through his own wilful act, neglect,

and in default, that mortgagee may appoint;

not to revoke appointment without consent of mortgagee.

Indemnity to receiver.

31. FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

or default (*l*): *Provided nevertheless, and it is hereby further declared and agreed,* that it shall not be lawful for the said [*receiver*], or any future receiver to be appointed as aforesaid, to act in the execution of his office of receiver, unless or until default shall be made in payment of the said principal sum of £—— and interest, or some part thereof respectively (*m*); but no such tenant or tenants, occupier or occupiers as aforesaid, shall be bound to take notice of this present proviso or declaration. IN WITNESS &c.

Receiver not to act until default.

Variations, where mortgagee is to be responsible for receiver's acts;

(*l*) If it is intended that the mortgagee shall be responsible for the receiver's acts, (and, in order to prevent dispute, some declaration on the point seems necessary), say—

"and that the said [*mortgagee*], his executors, administrators, or assigns, exclusively, shall be responsible for the acts, receipts, and defaults of the said receiver, or of any future receiver, to be nominated and appointed as aforesaid."

—where the principal is to remain a given time upon the security.

(*m*) Or, if the principal is to remain until a future year on the security, and the interest is payable in the meantime half-yearly, say—

"in payment of some or one of the said half-yearly payments of the interest of the said principal sum of £——."

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32. APPOINTMENT IN FEE WITH SPECIAL CLAUSES.

32. MORTGAGE *in* FEE *by* APPOINTMENT (*without a Release* (*a*)), *to a* TRUSTEE *for Mortgagee;* COVENANT *by* MORTGAGEE NOT TO CALL *in* PRINCIPAL MONEY *for a given Period, the* INTEREST *being* PUNCTUALLY PAID; *also by* MORTGAGOR NOT *to* PAY OFF *Principal Money until such Time;* POWER *of* DISTRESS *for Recovery of the* INTEREST.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagee*], of &c., of the second part; and [*trustee*], of &c., of the third part. (*Recite conveyance to mortgagor to uses for preventing*

(*a*) As to the omission of the release, *vide ante*, Vol. 5, p. 560.

dower). And whereas the said [*mortgagee*] hath, at the request of the said [*mortgagor*], agreed to lend and advance to him the sum of £—— at interest, on the security of a mortgage of the said —— and hereditaments; and it hath been agreed that the said hereditaments shall be conveyed unto and vested in the said [*trustee*], as a trustee for and on the behalf of the said [*mortgagee*]. NOW THEREFORE THIS INDENTURE WITNESSETH, that, in consideration of the said sum of £—— of lawful British money, lent and advanced by the said [*mortgagee*] to the said [*mortgagor*], at or before the execution of these presents, the receipt of which said sum the said [*mortgagor*] doth hereby acknowledge, and from the same sum and every part thereof doth acquit, release, and for ever discharge the said [*mortgagee*], her heirs, executors, administrators, and assigns; And also in consideration of 10*s.* of like lawful money at the same time paid by the said [*trustee*] to the said [*mortgagor*], the receipt whereof is hereby also acknowledged, the said [*mortgagor*], in exercise and execution of the aforesaid power or authority reserved to him by the hereinbefore in part recited indenture of release, and of all other powers and authorities in anywise enabling him in this behalf, *Doth* hereby direct, limit, and appoint, that All that, *(describe parcels)*, together with all the rights, members, and appurtenances, to the said hereditaments and premises, or any part thereof, belonging or appertaining, shall henceforth remain and be To the use of the said [*trustee*], his heirs and assigns, for ever, *In trust* for the said [*mortgagee*], her heirs and assigns, subject nevertheless to the proviso or condition for redemption hereinafter contained, (that is to say), Provided always, and these presents are upon this express condition, that, if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall pay unto the said [*mortgagee*], her executors, administrators, or assigns, the sum of £——, with interest for the same, at the rate of 5*l.* per centum per annum, from the day of the date of these presents, on the —— day of —— next ensuing, between the hours of one and two of the clock in the afternoon, at the dwelling-house of the said [*mortgagee*], in —— street, in the parish of ——, in the city of ——, if the said [*mortgagee*] shall be then living and resident at the place aforesaid, but if not, then in the common dining-

32. APPOINTMENT IN FEE, WITH SPECIAL CLAUSES.

Recital of agreement for loan.

Testatum.

Mortgagor appoints

Parcels,

to the use of trustee for mortgagee in fee.

Proviso for redemption.

32. APPOINTMENT IN FEE WITH SPECIAL CLAUSES.

hall of the Middle Temple, in the city of London (*b*), without any deduction or abatement whatsoever, then and immediately thereupon these presents, and every clause, matter, and thing herein contained, shall cease, determine, and be absolutely void, anything hereinbefore contained to the contrary notwithstanding. AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], her executors and administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, will pay unto the said [*mortgagee*], her executors or administrators, the sum of £—— of lawful British money, with interest for the same, at the rate of 5*l.* per centum per annum, from the day of the date of these presents, on the —— day of —— next ensuing, between the hours of one and two of the clock in the afternoon, at the dwelling-house of the said [*mortgagee*], in —— street, in the parish of ——, in the city of ——, if the said [*mortgagee*] shall be then living, and shall reside at the said dwelling-house, but if not, then in the common dining-hall of the Middle Temple, in the city of London, without any deduction or abatement whatsoever (*c*). (*Covenants with the trustee for title*, ut ante, Vol. 5, p. 570). AND the said [*mortgagee*], for herself, her heirs, executors, and administrators, doth hereby covenant with the said [*mortgagor*], his executors and administrators, that in case the said [*mortgagor*], his heirs, executors, or administrators, shall duly and regularly pay the interest on the said principal sum of £—— half-yearly, on the —— day of —— and the —— day of —— in every year, while the said principal sum shall remain owing upon this security, or within one calendar month after the said respective days of payment as aforesaid, then that the said [*mortgagee*], her executors or administrators, shall not nor will call in or require payment of the said principal sum, until the expiration of the period of seven years from the day of the date of these presents, nor will the said [*mortgagee*], her heirs, executors, or administrators, commence or institute any proceedings at law or in equity, to enforce the

Covenant by mortgagor to pay mortgage-money.

Covenant by mortgagee not to call in mortgage-money for seven years, the interest being punctually paid.

(*b*) As to naming a place of payment, *vide ante*, Vol. 5, p. 379.

(*c*) It is more convenient, for the purposes of pleading, in case of an action being brought on the covenant for payment, that the covenant should be complete in itself, and not (as it usually is) referential to the proviso for redemption.

32. APPOINTMENT IN FEE, WITH SPECIAL CLAUSES.

payment of the said principal sum, or to obtain possession of the said hereditaments, or foreclose the equity of redemption thereof; but, in case default shall be made by the said [*mortgagor*], his heirs, executors, or administrators, in payment of the said interest money within one calendar month after any or either of the said half-yearly days of payment, it shall be lawful for the said [*mortgagee*], her heirs, executors, or administrators, to pursue and prosecute all or any of her or their remedies, as a mortgagee or mortgagees of the said hereditaments, or as a creditor or creditors of the said [*mortgagor*], his heirs, executors, or administrators, or otherwise, by virtue of these presents, in the same manner as if this present covenant had not been made. AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], her executors, and administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, shall not nor will pay or tender the said principal sum of £—— to the said [*mortgagee*], her heirs, executors, administrators, or assigns, nor institute any suit or proceedings in equity to enforce or compel the redemption of the said hereditaments, until the expiration of the said period of seven years from the date hereof (*d*); And if the said [*mortgagee*], or the said [*mortgagor*], or their respective heirs, executors, or administrators, shall institute any action or suit at law or in equity against the other of them, his or her heirs, executors, or administrators, contrary to his or her respective covenant hereinbefore contained, such covenant shall or may be pleaded and shewn in bar thereto. AND for the better securing the payment of the interest of the said principal sum of £—— (*e*), the said [*mortgagor*], and also the said [*trustee*], at the request and by the direction of the said [*mortgagor*], and so far as he lawfully can or may, do respectively hereby grant unto the said [*mortgagee*], her executors, administrators, or assigns, that, as often as it shall happen that the interest of the said principal sum of £—— shall be in arrear, in the whole or in part, for the space of —— days after any of the days hereinbefore ap-

—by mortgagor not to pay off mortgage-money before seven years.

Power of distress for the recovery of interest.

(*d*) The question, whether a mortgagor can redeem before the time named in the proviso for redemption is considered *ante*, Vol. 5, p. 93.

(*e*) As to giving a power of distress for the recovery of interest due upon a mortgage, *vide ante*, Vol. 5, p. 514.

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pointed for payment of the same, it shall be lawful for the said [*mortgagee*], her executors, administrators, or assigns, into and upon the —— and premises hereby appointed, or otherwise assured, or intended so to be, or into and upon any part of the same in the name of the whole, to enter, and distrain for the same interest, and the arrears thereof, and the distress and distresses then and there found to impound, and in pound to detain, and in due time to appraise and dispose of the same according to the due course of law, in the same manner in all respects as landlords are, by act of Parliament or otherwise, authorized to do in respect of distresses for arrears of rent reserved upon leases for years; to the intent that the said [*mortgagee*], her executors, administrators, or assigns, shall and may, by the same distress or distresses, be fully paid and satisfied all arrears of the said interest, and all costs occasioned by the non-payment thereof (*f*). IN WITNESS &c.

Utility of warrant of attorney in ejectment.

(*f*) In order to facilitate the recovery of the possession of the mortgaged property by the mortgagee, in case of default in payment of the mortgage-money, a warrant of attorney to confess judgment in ejectment is sometimes given, which is especially useful when the mortgagor himself is the occupant. *Vide ante*, Vol. 5, p. 516. The following precedent of such a warrant of attorney, it will be perceived, is unconnected with the foregoing precedent:—

WARRANT OF ATTORNEY IN EJECTMENT.

WARRANT *of* ATTORNEY *to confess Judgment in Ejectment.*

TO —— and ——, Attorneys of her Majesty's Court of Queen's Bench, at Westminster, jointly and severally, or to any other Attorney of the same Court.

THESE are to desire and authorize you, the attorneys above named, or any one of you, or any other attorney of the Court of Queen's Bench aforesaid, to appear for me [*mortgagor*], of &c., in the said Court forthwith, or at any time or times hereafter, and then and there to receive a declaration for me in an action of trespass and ejectment, at the suit of John Doe, on the demise of [*mortgagee, or his trustee, as the case may be,*] for two messuages, three outhouses, two yards, two gardens, and one rood of land, with the appurtenances, in the parish of ——, in the county of

WARRANT OF ATTORNEY IN EJECTMENT.

——; which the said [*mortgagee or trustee*] had demised to the said John Doe, for the term of —— years from ——; and thereupon to confess the same action, or else to suffer judgment, by nil dicit or otherwise, to pass against me in the said action, and to be thereupon entered up forthwith against me of record in the same Court, for the recovery of the said term yet to come of and in the said tenements, and also for the recovery of £—— damages, besides costs of suit. And I the said [*mortgagor*] do hereby further authorize and empower you the said attorneys, or any one of you, or any other attorney as aforesaid, after the said judgment shall be so entered up as aforesaid, for me, and in my name, and as my act and deed, to sign, seal, and execute a good and sufficient release or good and sufficient releases in the law to the said John Doe, and the said [*mortgagee or trustee*], or either of them, or the heirs, executors, administrators, or assigns of them or either of them, of all and all manner of error and errors, and writ and writs of error, and all benefit and advantage thereof, and all misprisions of error and errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, or to be had, made, committed, done, or suffered, in, about, touching, or concerning the aforesaid judgment, or in, about, touching, or concerning any writ, warrant, process, declaration, plea, entry, or other proceeding whatsoever, of or in anywise concerning the same: And for what you the said attorneys, or any one of you, shall do, or cause to be done in the premises, or any of them, this shall be to you, or any of you, a sufficient warrant and authority. In witness &c.

DEFEAZANCE.

DEFEAZANCE TO WARRANT OF ATTORNEY IN EJECTMENT.

WHEREAS, by indentures of lease and re-lease, bearing date respectively, the lease the day before, and the release even date with the above-written warrant of attorney, and respectively made between the said [*mortgagor*] of the one part, and the said [*mortgagee*] of the other part, in consideration of the sum of £—— lent and advanced by the said [*mortgagee*] to the said [*mortgagor*], the said [*mortgagor*] hath conveyed and assured unto the said ——, his heirs and assigns, certain messuages, &c., situate, lying, and being in the said parish of ——, in the county of ——, now in the occupation of the said [*mortgagor*]; *To hold* the same unto

DEFEAZANCE TO WARRANT OF ATTORNEY IN EJECTMENT.

and to the use of the said [*mortgagee*], his heirs and assigns, for ever, subject to a proviso or condition in the said indenture of release contained, for the redemption of the same premises on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £——, with interest for the same at the rate of five pounds per cent. per annum, on the —— day of —— next ensuing, at the common dining-hall &c., without any deduction or abatement whatsoever. NOW IT IS HEREBY DECLARED, that the judgment so to be entered up against the said [*mortgagor*], in pursuance of the above-written warrant of attorney, is intended and agreed to be a further security to the said [*mortgagee*], his executors, administrators, and assigns, for the said principal sum of £—— and interest, secured by the hereinbefore-recited indenture of release or mortgage; and that no execution or executions shall be issued or taken out upon the said judgment, unless and until default shall be made in payment of the said principal sum and interest, or some part thereof respectively, on or at the day or time mentioned and appointed for payment thereof as aforesaid; and that, in case and when such default shall be made as aforesaid in payment of the said principal sum and interest, or any part thereof(*g*), then, and in such case, it shall be lawful for the said [*mortgagee*], his heirs, executors, administrators, or assigns, to sue out execution or executions upon or by virtue of the said judgment, for the recovery of the possession of the said hereditaments. And it is further declared and agreed, that it shall not be necessary for the said [*mortgagee*], his heirs, executors, administrators, or assigns, to revive, or cause to be revived, the said judgment, although the same

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(*g*) Add, if so intended—

Variation as to notice.

" and the said [*mortgagee*], his heirs, executors, or administrators, shall have given to the said [*mortgagor*], his heirs or assigns, or left at his or their last usual place of abode, —— calendar months' notice, in writing, of his or their intention to proceed upon the said judgment, unless the said principal and interest moneys shall be paid at or before the expiration of such notice; and if the same moneys shall not be paid pursuant to the requisition in such notice,"

shall have been entered of record for the space of one year and upwards; and that the said [*mortgagor*], his heirs, executors, and administrators, shall not nor will have, receive, or take any plea, exception, proceeding, or other benefit, from the omission of the said [*mortgagee*], his heirs, executors, administrators, or assigns, to keep on foot or revive the said judgment, although the same shall have been entered for the space of one year or upwards; and that, if the said [*mortgagee*], his heirs, executors, or administrators, shall attempt so to do by action or other legal proceeding or proceedings whatsoever, this present agreement shall and may be pleaded or shewn in bar thereto, any rule or practice of the courts, or any one of them, to the contrary thereof in anywise notwithstanding (*h*). As WITNESS the hands of the parties the day and year above written.

DEFEAZANCE TO WARRANT OF ATTORNEY IN EJECTMENT.

(*h*) [As to this proviso, *vide ante*, Vol. 5, p. 63.]

33. MORTGAGE *in Fee of* PLANTATIONS *in the Island of* ST. CHRISTOPHER (*a*), *to secure a* SUM ALREADY ADVANCED, *and* FURTHER ADVANCES *to be made.* COVENANT *by* MORTGAGOR *to* CONSIGN *a certain Portion of the* PRODUCE *to* MORTGAGEES. COVENANT *by* MORTGAGEES *to make* ADVANCES *on* CONSIGNMENTS *in a given Ratio.*

33. OF PLANTATIONS IN THE WEST INDIES.

THIS INDENTURE, &c., BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagees*], of &c., merchants and copartners, of the other part. WHEREAS the said [*mortgagor*] is seised or entitled for an estate of inheritance in fee-simple in possession of or to the plantations or tracts and pieces or parcels of land hereinafter particularly mentioned, situate in the island of St. Christopher, in the West

Recital of seisin of mortgagor;

(*a*) As to the laws relating to conveyances in Antigua and the other Leeward Caribbee islands, vide ante, Vol. 2, pp. 213, 223, 1st & 2nd eds. A summary of the laws relating to the other British West India islands will be found ante, Vol. 2, p. 249 et seq., in the Editor's second edition of the present work.

Laws of Leeward Caribbee islands.

33. OF PLANTATIONS IN THE WEST INDIES.

Indies, with the erections and buildings thereupon: and is also seised or possessed or absolutely entitled of or to the (*b*) cattle, plantation implements and utensils, and other live and dead stock, upon or belonging to the said plantations, or tracts and pieces or parcels of land; but subject and charged and chargeable to and with the several mortgages and incumbrances hereinafter mentioned or referred to, of or upon the whole, or some part or parts of the said plantations, hereditaments and premises.

Agreement for loan;

AND WHEREAS the said [*mortgagor*], having occasion for the sum of 7,000*l.*, and for such other advances as are hereinafter mentioned, hath applied to and requested the said [*mortgagees*] to advance and lend to him the said sum of 7,000*l.*, and to enter into the covenant hereinafter contained for making such further advances as are hereinafter mentioned;

Recital of agreement for lease;

And, in order to induce the said [*mortgagees*] so to do, the said [*mortgagor*] hath proposed to secure the repayment of the said sum of 7,000*l.*, and such further advances as aforesaid, with interest for the same respectively in the meantime, in manner hereinafter mentioned. AND WHEREAS the said [*mortgagees*], having taken the said request and proposal of the said [*mortgagor*] into consideration, have agreed to comply with the same; and, accordingly, they the said [*mortgagees*] have this day paid or advanced to the said [*mortgagor*] the sum of 7,000*l.* of lawful money of the United Kingdom of Great Britain and Ireland, as money is valued in Great Britain;

of warrant of attorney in ejectment;

AND WHEREAS, in pursuance and part performance of the proposal so made by the said [*mortgagor*] as aforesaid, he the said [*mortgagor*], hath this day by the direction of the said [*mortgagees*], executed to [*attorney*] a warrant of attorney, to confess, in the name of him the said [*mortgagor*], judgment in any action or actions of ejectment (*c*), to be brought in the proper court of the said island of St. Christopher, at the suit of the said [*mortgagees*], for recovering the possession of the said plantations, hereditaments, and premises: And it is intended and agreed, that such judgment shall be forthwith entered up of record in the proper court of the said island, and that no writ of error or appeal shall

(*b*) The extinction of slavery in the British colonies since the last edition of this work, happily admits of the expunging of those clauses which related to this monstrous species of property.

(*c*) *Vide* precedent of a warrant of attorney in ejectment, *ante*, p. 124.

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Testatum:

be allowed from such judgment. NOW THIS INDENTURE WITNESSETH, that, in pursuance and further performance of the said proposal on the part of the said [*mortgagor*], and in consideration of the sum of £7,000 paid or advanced by the said [*mortgagees*], to the said [*mortgagor*], as hereinbefore is mentioned, the receipt of which sum of £7,000 the said [*mortgagor*] doth hereby admit and acknowledge, and of and from the same and every part thereof doth acquit, release, and discharge the said [*mortgagees*], and each and every of them, and the heirs, executors, administrators, and assigns of them and of each and every of them, for ever, by these presents, and for and in consideration of the sum of 10*s.* of lawful money aforesaid, to the said [*mortgagor*] paid by the said [*mortgagees*], at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), He the said [*mortgagor*] *Hath* granted, bargained, sold, released, assigned, and confirmed, and by these presents *Doth* grant, &c., unto the said [*mortgagees*], their heirs, executors, administrators, and assigns, respectively, according to the nature and quality thereof respectively, ALL THAT, (*describe parcels*); (all such parts of which premises as are of the nature of freehold, or of real estate, are now in the actual possession of the said [*mortgagees*], by virtue of a bargain and sale to them thereof made by the said [*mortgagor*], in consideration of 5*s.*, by an indenture bearing date the day next before the day of the date of these presents, for the term of one year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession) (*d*): AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits, of all and singular the plantations, hereditaments, and premises hereinbefore mentioned to be hereby released and assigned respectively, and every of them, and every part and parcel thereof; AND all the estate, right, title, interest, equity of redemption, use, trust, possession, property, possibility, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in, to, from, out of, and upon the said plantation, hereditaments, and premises, and every of them,

In consideration of money now advanced,

Mortgagor grants and releases to mortgagee:

Reference to lease for a year

and the reversion, &c.

—and all the estate, &c.;

(*d*) *Vide post*, p. 136, n.

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Habendum, as to such part as is real estate;

and every part and parcel thereof; To HAVE AND TO HOLD all and every such part or parts of the premises hereinbefore mentioned to be hereby released and assigned, as are or is of the nature of freehold or real estate, (subject to the incumbrances upon the same premises respectively hereinafter mentioned), unto the said [*mortgagees*], and their heirs, To THE USE of the said [*mortgagees*], their heirs and assigns, for ever; *But subject* to the proviso or condition, covenant, and agreement hereinafter contained, for the redemption of the same premises; AND TO HAVE AND TO HOLD all and every such part or parts of the premises hereinbefore mentioned to be hereby released and assigned, as are or is personal estate, or of the nature of chattels, (subject to the incumbrances upon the same premises respectively hereinafter mentioned), unto the said [*mortgagees*], their executors, administrators, and assigns, henceforth, for their proper use and benefit; *But subject* to the proviso or condition, covenant, and agreement hereinafter contained, for the redemption of the same premises. PROVIDED ALWAYS, *and it is hereby agreed and declared between and by the said* [*mortgagees*], that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do, on the —— day of —— now next ensuing, well and truly pay, or cause to be paid, to the said [*mortgagees*], their executors, administrators, or assigns, at the Royal Exchange, in the city of London, the sum of £7,000 of lawful money of the United Kingdom of Great Britain and Ireland, as money is valued in Great Britain, with interest for the same at the rate of £6 (*e*) for every hundred pounds by the year, computed from the day of the date of these presents: And also all and every sums and sum of money (if any) which the said [*mortgagees*], their executors, administrators, or assigns, shall have advanced or lent, or engaged for the payment of, to or for the use or on account of the said [*mortgagor*], his heirs, executors, administrators, or assigns, in pursuance of the covenant or agreement hereinafter for that purpose contained; together with interest for the same sums of money respectively after the rate aforesaid, to be computed from the time or respective times of advancing the same respectively,

Habendum as to such part as is personal estate.

Proviso for redemption, on repayment of money now advanced and to be advanced, pursuant to mortgagees' covenant, and interest.

(*e*) As to the rate of interest in the West Indies, *vide ante*, Vol. 5, p. 395.

without any deduction or abatement whatsoever, [out of the said sum of £7,000, or such other sums or sum of money as aforesaid, or the interest thereof respectively, for or in respect of any taxes, charges, rates, assessments, payments, or impositions, taxed, charged, assessed, or imposed, or to be taxed, charged, assessed, or imposed, on the plantations, hereditaments, and premises hereby granted, released, and assigned, or mentioned or intended so to be, or any of them, or upon the said sum of £7,000, or such other sums or sum of money as aforesaid, or any part thereof respectively, or upon the said [*mortgagees*], their heirs, executors, administrators, or assigns, or any other person or persons whomsoever, for, upon account, or in respect of the said plantations, hereditaments, and premises, or any of them; or of the said sum of £7,000, or such other sums or sum of money as aforesaid, or any part thereof respectively, by authority of Parliament, or of the interior legislature of the said island of St. Christopher, or otherwise howsoever, or for or upon account or in respect of any other matter, cause, or thing whatsoever]; then, and in such case, they the said [*mortgagees*], their heirs, executors, administrators, or assigns respectively, shall and will, at any time after such payment shall be so made as aforesaid, upon the request and at the proper costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, reconvey and assign the plantations, hereditaments, and premises hereby granted and released, and assigned, respectively, or mentioned or intended so to be, with their appurtenances, unto the said [*mortgagor*], his heirs, executors, administrators, and assigns respectively, according to the nature and quality of the same premises respectively, or as he or they shall in that behalf order or direct, free from all incumbrances whatsoever, made, done, or committed by the said [*mortgagees*], their heirs, executors, administrators, or assigns, or any of them; [so as for the doing thereof the said [*mortgagees*], their heirs, executors, administrators, or assigns, or any of them, be not compelled or obliged to go or travel from the place or places of his, or their, or any of their usual abode or dwelling]. PROVIDED ALSO, and it is hereby further agreed and declared between and by the parties to these presents, that if at any time or times before the said —— day of —— now next ensuing, or at any time or times

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Proviso, charging lands with sums to be advanced by mortgagees beyond the amount

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specified in their covenant.

after the said —— day of —— now next ensuing, and before the said [*mortgagees*], their heirs, executors, administrators, or assigns respectively, shall have reconveyed or re-assigned the premises hereby granted, released, and assigned respectively, or expressed and intended so to be, or shall have been requested so to do by the said [*mortgagor*], his heirs, executors, administrators, or assigns, by any writing under his or their hand or hands, they the said [*mortgagees*], their executors, administrators, or assigns, shall advance or lend, or engage for the payment of any sum or sums of money, to or for the use or on the account of the said [*mortgagor*], his heirs, executors, administrators, or assigns, (other than the advances hereinafter covenanted and agreed to be made); then and in such case, (whether default shall or shall not have been made in payment of the principal moneys and interest mentioned in the proviso for redemption hereinbefore contained), All and singular the plantations, hereditaments, and premises hereby granted and released, and assigned respectively, or expressed and intended so to be, with their appurtenances, shall be and remain a security to the said [*mortgagees*], their executors, administrators, and assigns, for, and stand and be charged and chargeable with, the repayment to them of all and every the sums and sum of money which shall be so advanced or lent, or engaged to be paid, as lastly hereinbefore is mentioned, with interest thereupon respectively after the rate aforesaid, at the expiration of six calendar months from the time or respective times of advancing the same; and shall not be redeemed or redeemable but upon payment as well of the said sum of £7,000 and such further sum or sums of money so as aforesaid to be advanced or lent, or engaged for the payment of, in pursuance of the covenant or agreement hereinafter for that purpose contained, with interest thereon respectively; after the rate and on or at the day or time hereinbefore mentioned or appointed for the payment thereof respectively; as also of all and every or any other sums or sum of money which shall be so advanced or lent, or engaged to be paid by the said [*mortgagees*], their executors, administrators, or assigns, either before or after the —— day of —— now next ensuing, as hereinbefore is mentioned, with interest thereupon respectively, after the rate aforesaid,

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after the expiration of six calendar months from the time or respective times of advancing the same. AND the said [*mortgagor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagees*], their executors, administrators, and assigns, that he, the said [*mortgagor*], his heirs, executors, or administrators, shall and will, on the said —— day of —— now next ensuing, well and truly pay, or cause to be paid, unto the said [*mortgagees*], their executors, administrators, or assigns, the aforesaid sum of £7,000, and all and every further sums or sum of money to be advanced or lent, or engaged to be paid by them the said [*mortgagees*], their executors, administrators, or assigns, in pursuance of the covenant or agreement hereinafter for that purpose contained, as shall be then owing and unpaid, with interest for the same respectively, after the rate and in the manner aforesaid, without any deduction or abatement whatsoever, according to the true intent and meaning of these presents: And also shall and will from time to time well and truly pay, or cause to be paid, to the said [*mortgagees*], their executors, administrators, or assigns, all and every, or any other sum or sums of money by them so to be advanced or lent, or engaged to be paid as aforesaid, with interest thereupon respectively, after the rate aforesaid, at the expiration of six calendar months from the time or respective times of advancing the same. (*Add usual covenants for title, excepting in the covenant against incumbrances, the subsisting charges, also for insurance of buildings, mills, machinery, &c., and proviso for enjoyment until default*). AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance and further performance of the said proposal on the part of the said [*mortgagor*], and for the purpose of further securing the payment of the said sum of £7,000, and such further sum or sums of money to be advanced or lent as aforesaid, and all interest for the same respectively, the said [*mortgagor*] Doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagees*], their executors, administrators, and assigns, in manner following, (that is to say), that he, the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will, out of and from the crop or produce in this present year of the said hereditaments and premises, ship and consign eight hundred hogsheads of

Covenant by mortgagor to pay money now advanced;

And further sums to be advanced pursuant to covenant.

And all further moneys to be advanced.

Further *testatum*:

Covenant by mortgagor to ship and consign sugars to mortgagees.

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sugar unto the said [*mortgagees*], their executors, administrators, or assigns, at the port of London, for sale, on the account and at the risk of him the said [*mortgagor*], his heirs, executors, administrators, or assigns (*f*). AND *it is hereby agreed and declared between and by the parties to these presents*, that the said [*mortgagees*], their executors, administrators, or assigns, shall from time to time cause the said sugars so to be consigned to them as aforesaid, to be insured at —— per hogshead, and shall apply the money, from time to time to arise and be produced by the sale of the said sugars, (after paying or retaining and satisfying thereout all the costs and charges for insurance and freight, and the usual charges for commission, and the expenses attending the said sale), in manner hereinafter mentioned, (that is to say), [it is hereby agreed and declared that the said [*mortgagees*], their executors, administrators, or assigns, shall apply] the proceeds of the one hundred and fifty hogsheads of sugar which shall first arrive, (after such deduction thereout as aforesaid), in the first place, in payment and satisfaction of the interest which from time to time shall be due for the said principal sum of £7,000, or any part thereof; and, in the next place, in or towards payment and satisfaction of the said principal sum of £7,000; And shall apply the proceeds of the five hundred hogsheads of sugar which shall next arrive, (after such deductions thereout as aforesaid), in the first place, in or towards payment and satisfaction of the interest which may have become due for any advance or advances which shall or may have been made by the said [*mortgagees*], their executors, administrators, or assigns, in pursuance of the covenant or agreement hereinafter for that purpose contained; and, in the next place, in or towards the re-payment and discharge of such last-mentioned advance or advances; And shall apply all the residue or surplus of such last-mentioned proceeds, (if any), and also the proceeds arising from the one hundred and fifty hogsheads of sugar which shall arrive last, (after such deductions thereout as aforesaid), in the first place, in or towards payment and satisfaction of the interest which shall be due on the security of this present indenture, and, in the next place, in or towards payment and satisfaction of so much

Application of moneys to arise from consignments.

As to one hundred and fifty hogsheads which shall first arrive.

As to next five hundred hogsheads.

As to last one hundred and fifty hogsheads.

(*f*) As to the validity of covenants to consign produce, *vide ante*, Vol. 5, p. 398).

and such part of the said sum of £7,000, as shall not have been paid off and discharged by the ways and means aforesaid, and of all and every other principal sums and sum of money (if any) which shall then be due or owing to them the said [*mortgagees*], their executors, administrators, or assigns, on the security intended to be made by these presents; And, after full payment and satisfaction thereof, shall pay all the surplus or residue of the said proceeds (if any) unto the said [*mortgagor*], his heirs, executors, administrators, or assigns, for his or their proper use and benefit. AND THIS INDENTURE LASTLY WITNESSETH, that, in pursuance and further performance of the said agreement on the part of the said [*mortgagees*], they the said [*mortgagees*], do for themselves, their executors, administrators, and assigns, covenant and agree with the said [*mortgagor*], his executors, administrators, and assigns, by these presents, That, after bills of lading of the first one hundred and fifty hogsheads of sugar to be shipped and consigned in pursuance of the covenant or agreement hereinbefore for that purpose contained, shall have been received by them the said [*mortgagees*], their executors, administrators, or assigns, they the said [*mortgagees*], their executors, administrators, or assigns, shall and will from time to time make advances to the said [*mortgagor*], his executors, administrators, or assigns (*g*), of £20 per hogshead on the five hundred hogsheads of sugar, which next after the said first one hundred and fifty hogsheads shall be shipped and consigned to them the said [*mortgagees*], their executors, administrators, or assigns, such advances (amounting together to the sum of £10,000) to be made in bills at three months' date, when and as from time to time the bills of lading of the same five hundred hogsheads of sugar shall be received by the said [*mortgagees*], their executors, administrators, or assigns, and the insurances shall be effected thereupon as aforesaid. AND LASTLY, the said [*mortgagor*] and [*mortgagees*] do, and each and every of them doth hereby nominate, constitute, and appoint [*attorneys*], of the said island of St. Christopher, ——, jointly and severally, their and his

Further *testatum.*

Covenant by mortgagees to make advances on consignments in a certain ratio.

Appointment of attorneys to acknowledge deed before registrar.

(*g*) Where a security is to extend to future advances of a given amount, some persons introduce a clause expressly negativing any *obligation* on the mortgagee to make advances to that extent. The intention, of course, on the point should be made clearly apparent.

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true and lawful attorneys and attorney, to acknowledge the respective hands and seals of them the said [*mortgagor*] and [*mortgagees*], subscribed and affixed to these presents and to the lease for a year on which the same are grounded, to be their respective hands-writing and seals, and to acknowledge these presents, and the said lease for a year (*h*), as their respective acts and deeds, before the registrar of the said island, or his lawful deputy for the time being, or other competent authority in the said island, in order that the same may be registered and recorded, according to the acts, laws, and constitution of the said island of St. Christopher, as fully and effectually, to all intents and purposes, as they the said [*mortgagor*] and [*mortgagees*] respectively might or could do if personally present. IN WITNESS &c.

As to leases for a year in colonial conveyances.

(*h*) It is stated in a former part of the present work, (*ante*, Vol. 2, p. 222, 1st ed.), that a lease for a year is useless in the conveyance of "freehold colonial property." Such, undoubtedly, is the fact in regard to Jamaica, Barbadoes, Antigua, St. Vincent, Upper Canada, and New Brunswick, in which, by the provisions of various acts of the local legislatures of those colonies, deeds duly registered, whether executed there or elsewhere, have the operation of conveyances without livery of seisin, or any other ceremony. And so in Dominica, if the deed be made *in* the island: but the Editor has not been able to discover any authority for treating this rule as applicable to St. Kitt's, Trinidad, the Bahama islands, or any other British colonial possession. A lease for a year, therefore, in the present instance, seems to be proper.

34. ASSIGNMENT *of* LIFE-INTEREST (*a*) *in Dividends of* £2,000, £3 PER CENT. CONSOLS, *and* APPOINTMENT *of* REVERSION *in same Stock by Mortgagor's* WIFE, UPON TRUSTS FOR SALE, *for* SECURING *a* SUM OF MONEY *and* INTEREST; *Usual* POWER *of* ATTORNEY, COVENANTS, *&c.; Recital of* POLICY *of* INSURANCE *effected by* MORTGAGEE *on* LIFE *of* MORTGAGOR *as a collateral Security; Usual Insurance; Covenants by Mortgagor.* (*A short Form*).

34. OF DIVIDENDS, AND REVERSIONARY INTEREST OF STOCK.

THIS INDENTURE, made the —— day of ——, BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagor's wife*], wife of the said [*mortgagor*], of the second part; and [*mortgagee*], of &c., of the third part: WHEREAS, by an indenture of settlement, bearing date on or about the —— day of ——, made between the said [*mortgagor*], of the first part; the said [*mortgagor's wife*], (then [*wife's maiden name*] spinster), of the second part; and [*trustees*] of &c., of the third part; (being the settlement executed previously to the marriage of the said [*mortgagor*] and the said [*mortgagor's wife*] his wife), the sum of £2,000 Consolidated three pounds per cent. Annuities, which, before the execution of the said indenture, had been transferred into the names of the said [*trustees*], was declared to be vested in them, *Upon trust*, to pay the dividends, interest, and annual produce thereof unto the said [*mortgagor*] or his assigns, or permit him or them to receive the same during his life; and after his decease, *Upon trust*, to pay the same dividends, interest, and annual produce unto the said [*mortgagor's wife*] or her assigns, or permit her or them to receive the same, during her life; and after her decease, *in trust*, as to the said sum of £2,000 Consolidated three pounds per cent. Annuities, for the children of the marriage as therein men-

Parties.

Recital of marriage settlement:

(*a*) As to the effect of alienation of a tenant for life's interest, upon powers given to him, *vide ante*, Vol. 5, p. 160. And as to giving notice to trustees of charges upon equitable choses en action, *vide ante*, Vol. 5, p. 458.

34. OF DIVIDENDS, AND REVERSIONARY INTEREST OF STOCK.

tioned; and in default of such children, *in trust* for such person or persons, and for such intents and purposes, as the said [*mortgagor's wife*] should by any deed or deeds, or by her last will and testament, to be respectively executed or signed and published by her in the presence of, and attested by, one witness or more, direct or appoint; and, in default of such direction or appointment, *in trust* for the said [*mortgagor's wife*], her executors, administrators, or assigns, for her and their own use and benefit. AND WHEREAS there is not nor has there been any child of the marriage of the said [*mortgagor*] and [*wife*] his wife. AND WHEREAS the said [*mortgagee*] hath agreed to lend and advance unto the said [*mortgagor*] the sum of £——, at interest, on the security of the dividends arising from the said sum of £2,000 Consolidated three pounds per cent. Annuities, settled in trust for him during his life, as aforesaid, and also of the reversionary interest in the said trust funds over which the said [*mortgagor's wife*] hath a general power of appointment as aforesaid (*b*). AND WHEREAS, upon the treaty of the said loan, it was agreed that the same should be further secured by an insurance, to be effected by the said [*mortgagee*] on the life of the said [*mortgagor*] as hereinafter expressed, at the costs and expense of the said [*mortgagor*], And accordingly, by a policy of assurance, bearing date the —— day of —— instant, under the hands and seals of three of the directors of the —— Assurance Company, numbered ——, the sum of £—— is assured to be paid to the said [*mortgagee*], his executors, administrators, or assigns, within —— calendar

Agreement for loan;

for insurance of mortgagor's life.

As to reversionary interest of the wife.

(*b*) The reversionary life-interest of the wife is not included in the security, being inalienable. A mortgagee who has a security on the equitable chose en action of a married woman, is in this situation: If the interest be reversionary, and the wife die while in that state, leaving the husband surviving, the mortgagee becomes entitled to the whole fund. If, on the other hand, the *husband* die while the interest continues reversionary, leaving the *wife* surviving, the wife is entitled to, and the mortgagee loses, the whole. If the husband and wife are both living when the event happens, upon which the reversion is expectant, the mortgagee becomes entitled, subject to the wife's claim to a settlement; and he ought, in such case, to lose no time in reducing it into possession, for, should the husband die before this is done, it is by no means clear that the wife would not take the whole by survivorship. The same rules apply where the interest which is the subject of the security was originally immediate, as where it becomes so, in the lifetime of the husband and wife, subsequently to the execution of the instrument.

months after proof is therein mentioned of the decease of the said [*mortgagor*], he the said [*mortgagee*], his executors, administrators, or assigns, paying yearly and every year during the life of the said [*mortgagor*], the premium or sum of £——, which said annual premium will become payable on the —— day of —— (*c*). NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, lent and paid by the said [*mortgagee*] to the said [*mortgagor*], at or before the execution of these presents, the receipt of which sum the said [*mortgagor*] doth hereby acknowledge, and from the same sum and every part thereof doth acquit, release, and for ever discharge the said [*mortgagee*], his executors, administrators, and assigns, he the said [*mortgagor*] *Hath* granted, bargained, sold, assigned, and transferred, and by these presents *Doth* grant, bargain, &c., unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THOSE the dividends of the said sum of £2,000 Consolidated three pounds per centum Annuities, in and by the above-recited indenture of the —— day of —— limited in trust for the said [*mortgagor*] and his assigns during his life as aforesaid; And all and every sums and sum of money henceforth to become due to the said [*mortgagor*] in respect of the dividends, interest, or annual produce to arise from the stocks, funds, and securities whereon the produce of the said sum of £2,000 Consolidated three pounds per centum Annuities, shall, by virtue of the trusts of the said indenture, for the time being happen to be invested; AND ALSO all the right, title, interest, claim, and demand whatsoever, both at law and in equity, of the said [*mortgagor*], in, to, or out of the same dividends and premises: TO HAVE, RECEIVE, AND TAKE the dividends and premises intended to be hereby assigned, with all benefit and advantage thereof, unto the said [*mortgagee*], his executors, administrators, and assigns, henceforth absolutely during the life of the said [*mortgagor*], and for all other the interest (if any) of him the said [*mortgagor*] therein, *Upon the trusts*, and for the intents and purposes hereinafter declared concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore expressed, the said [*mortgagor's wife*], by virtue and in exercise of the power and authority reserved to

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Testatum:

Mortgagor, in consideration of mortgage-money,

Assigns life-interest in stock.

Habendum.

Further *testatum:*

Mortgagor's wife appoints reversionary in-

(*c*) [See a different form of the provision for insurance, *ante*, p. 56.]

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terest in fund to mortgagee, upon the trusts after declared.

her in and by the hereinbefore in part recited indenture of settlement, and of every other power enabling her in this behalf, *Doth* by this deed, executed by her in the presence of the person or persons whose name or names is or are indorsed on these presents, as a witness or witnesses to the execution thereof by her the said [*mortgagor's wife*], absolutely and irrevocably direct and appoint that ALL THAT the sum of £2,000 Consolidated three pounds per centum Annuities, mentioned and comprised in the hereinbefore-recited indenture of settlement, and all and singular the stocks, funds, and securities whereon the moneys to arise and be produced therefrom shall from time to time, by virtue of the trusts of the same indenture, happen to be invested, and all the reversionary right, title, and interest therein, over which the said [*wife*] has any power of disposition or appointment as aforesaid, together with the dividends, interest, and annual produce to arise thereupon, from and immediately after the decease of the said [*mortgagor*] and of her the said [*mortgagor's wife*], shall (subject, nevertheless, to the trust declared by the same indenture in favour of the children (if any) of them the said [*mortgagor*] and [*mortgagor's wife*]) absolutely remain, continue, and be unto the said [*mortgagee*], his executors, administrators, and assigns, upon the trusts and for the intents and purposes hereinafter declared concerning the same. (*c*) [AND, for the considerations aforesaid, the said [*mortgagor*] and [*wife*], his wife, *do*, and each of them *doth* hereby irrevocably constitute and appoint the said [*mortgagee*], and his executors or administrators, the attorney and attorneys of them and each of them, with full power and authority for him and them, in the names or name of the said [*mortgagor*], and [*wife*], or either of them, or the executors or administrators of them or either of them, or otherwise, but at the costs and charges of the said [*mortgagor*], his executors, administrators, or assigns, to ask and demand, sue for, recover, and receive from all persons whom it may concern, the dividends, annuities, and premises respectively hereby assigned and appointed, or intended so to be, or any part thereof, and to give effectual discharges for the same, and to do and execute all such other acts, matters, and things, as may be expedient for deriving the full benefit of the

Power of attorney.

(*c*) The subject of this assignment being a mere equitable interest, the introduction of a power of attorney, though usual, is superfluous.

assignment hereby made; and to appoint from time to time a substitute or substitutes for all or any of the purposes aforesaid; the said [*mortgagor*] and [*wife*], his wife, hereby respectively ratifying and confirming, and agreeing to ratify and confirm whatsoever the said attorney or attorneys, or his or their substitute or substitutes, shall lawfully do or cause to be done in or about the premises.] AND *it is hereby declared and agreed by and between the said parties to these presents*, that the said [*mortgagee*], his executors, administrators, and assigns, shall stand possessed of the dividends and reversionary interest respectively hereinbefore assigned and appointed, or intended so to be, of and in the said sum of £2,000 Consolidated three pounds per centum Annuities, and also of the hereinbefore-recited policy of assurance, *Upon the trusts*, and for the intents and purposes hereinafter declared concerning the same, (that is to say), UPON TRUST, that if the said [*mortgagor*] and [*wife*], his wife, or either of them, or the executors, administrators, or assigns of them or either of them, do and shall, on the —— day of —— now next ensuing, at or in the common dining-hall of the Middle Temple, London, pay or cause to be paid unto the said [*mortgagee*]; his executors, administrators, or assigns, the sum of £—— of lawful British money, with interest for the same after the rate of £5 for every £100 by the year, from the day of the date of these presents, without any deduction or abatement whatsoever, then the said [*mortgagee*], his executors, administrators, or assigns, will or shall, on the request and at the costs of the person or persons paying the same, re-assign and re-assure the dividends, annuities, and premises respectively hereby assigned and appointed, or intended so to be, and also the hereinbefore-recited policy of assurance, unto such person or persons as he or they shall direct or appoint, freed from all incumbrances to be made, done, or committed by the said [*mortgagee*], his executors, administrators, or assigns in the meantime. BUT in case default shall be made in payment of the said principal sum and interest, at the time and in the manner hereinbefore provided for payment of the same, THEN UPON TRUST that the said [*mortgagee*], his executors, administrators, or assigns, do and shall, and he and they is and are hereby authorized and empowered, of his and their own proper authority without any further consent or concurrence of the said [*mortgagor*] and

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Mortgagee to stand possessed of dividends, &c.

Upon trust to re-assign on payment of mortgage-money;

In default of payment, upon trust to sell.

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[*wife*], his wife, or either of them, or the executors or administrators of either of them, to sell and absolutely dispose of the dividends, annuities, and premises respectively hereby assigned and appointed, or any part thereof, and the hereinbefore-recited policy of assurance, either by public auction or private contract, and under and subject to such conditions and stipulations as the said [*mortgagee*], his executors, administrators, or assigns shall think proper, with liberty to buy in the same at any auction or auctions, without being responsible for any loss or expense (*d*) occasioned thereby, and also to vary the terms of, or rescind any contract for sale which shall or may have been entered into, and do and shall assign and assure the said premises, when sold, to the purchaser or purchasers thereof, or as he, she, or they shall direct: AND UPON FURTHER TRUST, that the said [*mortgagee*], his executors, administrators, or assigns, do and shall, out of the proceeds of such sale or sales, retain and pay to and for himself or themselves respectively, the principal and interest moneys hereby intended to be secured, which shall then be due and owing to the said [*mortgagee*], his executors, administrators, or assigns, and all costs, charges, and expenses attending such sale or sales and the execution of the said trusts hereby reposed in him and them, and pay and assign the residue or surplus (if any) of the said proceeds, after such payments and deductions as aforesaid, unto the said [*mortgagor*] and [*wife*], his wife, or one of them, or the executors, administrators, or assigns of them or one of them, according to their, his, or her interests or interest therein. AND *it is hereby declared*, that the receipt or receipts of the said [*mortgagee*], his executors, administrators, or assigns, for any sum or sums of money to be received by him or them in the execution of the trusts hereinbefore contained, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof, and from all liability to ascertain the propriety of such sale or sales. AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his executors, administrators, and assigns, (*to pay principal money and interest, ut ante*, p. 60); And that they the said [*mortgagor*] and [*wife*], his wife, respectively, have full power and ab-

Declaration of trusts of purchase-moneys.

Receipts of mortgagee to discharge purchasers.

Covenants by mortgagor,

—that he and his wife have good right to assign;

(*d*) *Vide ante*, Vol. 5, p. 412.

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solute authority by these presents to assign and appoint the dividends, reversion, and premises respectively hereinbefore mentioned or expressed to be hereby assigned and appointed, or intended so to be, in manner aforesaid, free from all charges and incumbrances whatsoever, at any time or times heretofore created, occasioned, or suffered by the said [*mortgagor*] and [*wife*], or either of them, or any other person or persons whomsoever: *And also*, that neither the said [*mortgagor*] and [*wife*], nor the executors or administrators of the said [*wife*], will, at any time or times hereafter, release or discharge the said dividends, reversion, and premises, or any of them, or any part thereof respectively, [nor revoke or make void the power or authority hereinbefore given to the said [*mortgagee*], his executors, administrators, or assigns, without his or their consent in writing for that purpose first obtained]: *And further* that the said [*mortgagor*] and [*wife*], and the executors or administrators of the said [*wife*], and every person whosoever lawfully claiming or to claim any right, title or interest in and to the dividends, reversion, and premises, respectively hereby assigned and appointed, or intended so to be, will and shall, from time to time and at all times hereafter, at his or their own respective costs and charges until the same premises shall be sold and assigned as aforesaid, and afterwards at the costs and charges of the purchaser or purchasers thereof, his, her, or their executors, administrators, or assigns, make, do, execute, and perfect every such lawful act, deed, assignment, or assurance in the law whatsoever, for more effectually assigning, appointing, or otherwise assuring the said dividends, reversion, and other the premises respectively hereby assigned and appointed, or intended so to be, unto the said [*mortgagee*], his executors, administrators, or assigns, upon the trusts aforesaid, and for better enabling him or them to recover and receive the same, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised and required: *And also*, that the said [*mortgagor*], his executors or administrators, shall or will, so long as any sum or sums of money intended to be secured to the said [*mortgagee*], his executors, administrators, or assigns, by virtue of these presents, shall remain unpaid, duly and regularly pay the premiums and expenses to become payable in order to keep on foot the hereinbefore-recited policy of assurance, or in case the same or any policy

—free from incumbrances;

—not to release or discharge the dividends, &c., or revoke the power of attorney;

—and for further assurance;

—to keep on foot policy of assurance,

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and if necessary effect a new assurance;

and deliver to mortgagee the receipts for the premiums;

and that, in case of default, mortgagee may keep assurance on foot;

and mortgagor will repay sums so paid with interest:

of assurance to be effected as next hereinafter is mentioned shall be or by any means become void, shall and will effect in the said —— Assurance Office, or in some office of assurance in London or Westminster, to be approved of by the said [*mortgagee*], his executors, administrators, or assigns, a similar policy of assurance in the name or names of the said [*mortgagee*], his executors, administrators, or assigns; and shall and will from time to time, within —— (*e*) days after the annual premium payable in respect of such assurance as aforesaid shall become due, pay the same, and deliver to the said [*mortgagee*], his executors, administrators, or assigns, the receipt for such premium; and in case default shall be made by the said [*mortgagor*], his heirs, executors, or administrators, in keeping on foot such assurance as aforesaid, or in delivering the receipt for the annual premium to become payable thereon in manner aforesaid, then, and in every such case, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, from time to time, so long as any sum or sums of money intended to be secured by virtue of these presents shall remain unpaid, to keep on foot such assurance as aforesaid; And that the said [*mortgagor*], his executors or administrators, shall or will, within six calendar months, or sooner on demand thereof, pay unto the said [*mortgagee*], his executors, administrators, or assigns, such sum or sums of money as he or they shall pay or expend in or about such assurance, with interest for the same, after the rate of £5 per centum per annum, from the time or respective times of paying or expending the same; and the several trusts, provisions, and declarations hereinbefore contained for securing the said sum of £—— and the interest thereon, and the costs, charges, and expenses to be occasioned by the non-payment thereof, shall extend to and be available, by the said [*mortgagee*], his executors, administrators, or assigns, for securing the sum and sums of money to be so paid or expended on account of the said assurance as aforesaid, and the interest thereon, and all costs, charges, and expenses occasioned by the non-payment thereof; but so nevertheless that the total amount of principal money to be ultimately recoverable by virtue of these presents shall

(*e*) *i. e.*, Some day within fifteen days, which is the period generally allowed by the insurance offices for the renewal of policies.

not exceed the sum of £——; *And also*, that the said [*mortgagor*] shall and will, at any time and from time to time, at the request of the said [*mortgagee*], his executors, administrators, or assigns, as often as there shall be occasion, personally attend at any such office or place of assurance as aforesaid, and fairly and truly explain the state and condition of his health, and produce a certificate of his age, and give such references to medical men or others, and such other information, as shall be required of him, in order that an assurance may be effected on his life by the said [*mortgagee*], his executors, administrators, or assigns, pursuant to the covenant or agreement lastly hereinbefore contained; and shall not nor will do any act, or commit any default whatsoever, by means of which the above-recited policy, or any policy or policies of assurance to be effected as aforesaid, shall be impeached or become void, or by reason whereof any additional premium or premiums of assurance may become payable beyond the usual rate or premium of assurance (*f*). And *it is hereby further declared*, that the said [*mortgagee*], his executors, administrators, and assigns, shall hold the policy or policies of assurance to be effected pursuant to the covenant lastly hereinbefore contained, upon the same or the like trusts as are hereinbefore declared concerning the above-recited policy of assurance. In witness &c.

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—that mortgagor will attend at insurance-office;

and not do any act to vacate the policy.

Mortgagee to hold policy upon trusts aforesaid.

(*f*) As to life-insurances for the protection of mortgagees, *vide ante*, Vol. 5, p. 515.

35. WEST INDIA MORTGAGE, WITH SPECIAL PROVISIONS.

35. MORTGAGE OF PLANTATION *by* TENANT *in* TAIL *to secure a Sum of Money, accepted in lieu of a larger Sum due.* ARRANGEMENT *with* LEGATEES, ANNUITANT, *and* BOND CREDITORS *of Mortgagor's Testator.* COVENANT *by* MORTGAGOR *to* KEEP *up Plantations,* STOCK, *&c.*; *also to* CONSIGN PRODUCE *to a* FACTOR *of* MORTGAGEE, *who is to apply* PROCEEDS *in paying* ANNUITY *to* MORTGAGOR, *or to his* EXECUTORS; *then in Payment of* INTEREST *on Mortgage-Money; then of certain* ANNUITIES *to* LEGATEES (*who, in case of Deficiency, are to abate* PARI PASSU); *Surplus to go in Liquidation of Principal Mortgage-Money.* COVENANT *by Mortgagee not to* CALL *in* MORTGAGE-MONEY *for Ten Years, if Produce is consigned, &c.* DECLARATION *of* TRUST *of* INCUMBRANCES ASSIGNED *to* ATTEND *the Inheritance of these and certain other Estates.* (*Also Forms of* ACKNOWLEDGMENT *of Deed before the Lord Mayor, his* CERTIFICATE, *&c.*)

Parties.

THIS INDENTURE, made &c.; BETWEEN [*mortgagor*], of &c., of the first part; [*annuitant*], of &c., [*legatee*], of &c., and [*other legatee*], of &c., of the second part; [*trustee of debts*], of &c., of the third part; [*mortgagee*], of &c., of the fourth part (*a*). WHEREAS [*testator*], of &c., deceased, duly

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(*a*) Where the mortgage is simply from A. to several mortgagees, who advance their money in certain proportions, subject to an existing mortgage, the following recital may be introduced:—

Variation, where mortgage is by a person seised in fee (subject to an existing mortgage) to several mortgagees who advance their money in certain proportions.

"WHEREAS the said [*mortgagor*] is seised of or entitled unto the plantations, sugar-works, messuages, lands, tenements, and other hereditaments hereinafter mentioned and intended to be hereby granted and released, for an estate of inheritance in fee-simple and possession, together with the live and dead stock, rights, members, and appurtenances to the said plantations belonging or appertaining; subject nevertheless as to a moiety or half part only of the said plantations, &c., to a mortgage in fee thereof, made

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made and published his last will and testament in writing, bearing date &c., and thereby bequeathed to his wife [*wife*] [*legacy and annuity*]; and he bequeathed unto [*annuitant*] an annuity of £150 during her life, to be paid &c.; and to his daughters M. and G. he bequeathed a portion or sum of £2,000 sterling each; and he bequeathed unto A. and B., their executors and administrators, the sum of £3,000 sterling, *Upon trust* for the use and benefit of all and every the child and children of his reputed daughter (*b*) L. R., wife of T. R., of &c., who should be living at the death of the said L. R., in manner therein mentioned: (*Recite other bequests*): And the testator declared it to be his will and meaning that his Grenada estates should be charged and chargeable with, and the revenues thereof applied to discharge his debts, legacies, and annuities thereby given and bequeathed; and in order to prevent all disputes between the proprietors of his R. estate, and the proprietors of his share in the D. estate, touching the proportions in which they were to contribute to the payment of the annuities, debts, incumbrances, and legacies, and to the raising of the portions thereby given and bequeathed, the said testator directed that the said estates should respectively stand charged therewith, and the owners thereof be bound to contribute thereto in the following proportions (*c*), (that is to say), The R. estate should bear

Recites will of last owner, whereby he bequeathed to A. an annuity of 150*l.* and his two daughters legacies of 2,000*l.* each,

and he directed that his R. es-

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unto [*prior mortgagee*], of &c., in and by indentures of lease and release, bearing date &c., for securing unto him, his executors, administrators, and assigns, the sum of £—— and interest, at or upon a day or time mentioned in the said indenture of release, and since past. AND WHEREAS the said [*mortgagor*] having occasion for the sum of £——, he hath applied to and requested the said [*mortgagees*] to lend him the same at interest upon mortgage of the plantations, &c., of or to which the said [*mortgagor*] is seised or entitled as aforesaid, which they the said [*mortgagees*] have agreed to do in the following proportions (that is to say), the said [*one mortgagee*] hath agreed to advance the sum of £——, the said [*other mortgagee*] the sum of £——, &c."

(*b*) As to gifts to illegitimate children, *vide* 2 Jarm. on Devises, 342.

(*c*) An observation has already been made as to the propriety of apportioning charges affecting properties which are to devolve upon dif-

Difficulty of apportioning an-

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and pay two third parts thereof, and his share and interest in the D. estate should bear and pay the other one third part thereof; And the said testator did thereby give and devise to the said [*mortgagor*], then an infant, and the heirs of his body lawfully begotten, all that his said plantation or estate called R., as the same was then in his occupation, with all and singular the buildings, &c., and hereditaments and plantation-utensils, stores, and appurtenances of all sorts thereunto belonging; And as to his share and interest in the said D. estate, the said testator gave and devised the same, charged and chargeable as aforesaid, unto the said [*mortgagee*], his heirs and assigns; And as to the residue of his real and personal estate, the said testator devised and bequeathed the same to the said [*mortgagor*], his heirs, executors, and administrators; and the said testator appointed the said A. and B. executors of his said will. And whereas the said testator [*testator*] departed this life on or about the —— day of ——, in the year ——, without having altered or revoked his said will, which was afterwards proved in the Prerogative Court of the Archbishop of Canterbury by the executors therein named. And whereas the several gross sums of money bequeathed by the above-recited will have been duly paid, except the said legacies of £2000 each, bequeathed to the said [*legatees*], the two daughters of the said testator as aforesaid. And whereas the said [*widow*], the said testator's widow, is dead, but the other annuitants and legatees named in the will of the said testator are still living. And whereas the said testator [*testator*] was, at the time of his decease, indebted unto [*creditor*] in the sum of £5,000 by bond, dated on or about the —— day of ——, ——, and unto [*another bond-creditor*], in the sum of £1,500, secured by bond, dated &c. And the said testator was also indebted unto several other persons in various sums of money, the whole of which debts so due and owing by the said testator have, since his decease,

tate should stand charged with two-thirds of his debts, annuities, and legacies, and the D. estate with one-third.

Death of testator.

Payment of legacies;

Death of widow;

That testator owed certain bond-debts;

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nual charges in regard to West India estates.

ferent persons (*ante*, Vol. 5, p. 375). This is the more necessary in regard to annuities charged on property the annual value of which is liable to more than ordinary fluctuation, as in the case of a West India estate, which, as was observed by Sir *J. Leach*, "will in some years be enormously profitable, and in other years, instead of producing a profit, will incur a debt in its cultivation;" to settle the relative value in such a case, was, his Honor said, one of the most difficult questions he had ever met with. See *Lushington* v. *Sewell*, 1 Sim. 477.

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been duly paid or satisfied, except the said debts or sums of £5,000 and £1,500. And whereas, at the time of the decease of the said testator, his real estate called R., in the said island of G., was charged with the payment of an annuity or yearly sum of £100 unto G. P. and her assigns during her life, which said G. P. is still living. And whereas the said [*mortgagor*] attained his age of twenty-one years, on or about the —— day of ——. And whereas in consequence of the insurrection which happened in Grenada in the year 1795, the said estate called R. and the D. estate became wholly unproductive, the stock of slaves and cattle and other live and dead stock, and the buildings upon or belonging to the said estates, having been wholly or nearly destroyed; And as well for the purpose of reinstating the stock of the said R. estate, and repairing and rebuilding the works and buildings thereon, as also for paying off and satisfying such of the debts and pecuniary legacies charged upon the same as have been already paid, the said [*mortgagee*] hath at different periods advanced various sums of money to a considerable amount upon the account of the said estate, which several sums so advanced by the said [*mortgagee*] appear, by an account delivered by the said [*mortgagee*] to the said [*mortgagor*], to amount to the sum of £16,000 sterling or upwards; and inasmuch as the said several sums of money were so advanced by the said [*mortgagee*] for the purpose of ameliorating the said R. estate, and thereby rendering more effectual the security of the said unsatisfied bond-creditors, legatees, and annuitants, hereinbefore mentioned, the said [*mortgagee*] claims payment of the sums so advanced by him as aforesaid, with interest, in preference to the said unpaid bond-debts, legacies, and annuities. And whereas notwithstanding the application of the several sums of money advanced by the said [*mortgagee*] in stocking and improving the said R. estate since the aforesaid insurrection, the clear annual produce of the said estate hath been and is now very inadequate to pay its proportion of the said several subsisting annuities, and the interest of the said several subsisting charges and incumbrances thereon; And the annual produce of the aforesaid part or share of the said D. estate is also insufficient to discharge the remaining proportion of such annuities, and the interest of such charges and incumbrances; and in consequence thereof considerable arrears of the said annuities,

Also an annuity charged on the R. estate;

In consequence of an insurrection happening in Grenada, the testator's estate became of little value;

That mortgagee had advanced large sums in the repairs thereof,

viz. to the amount of 16,000*l.*, in lieu whereof he had agreed to take 9,000*l.*;

Annual produce of R. estate insufficient to pay proportion of annuities, &c.;

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and of the interest on the said charges and incumbrances, have accrued and are still due. And whereas the said [*mortgagee*] and the several other persons having charges or liens upon the said R. estate, are satisfied that the value of such estate is not nearly equal to the amount of its proportion of such charges or liens thereon; but it is thought probable that the condition of the said R. estate might be materially improved if the same were under the immediate management and control of the said [*mortgagor*]; And in order to induce the said [*mortgagor*] to undertake the management and direction of the said estate, by offering him a reasonable prospect of an ultimately substantial benefit in the said estate, the said [*mortgagee*] hath made the following proposals to the said [*mortgagor*], (that is to say), that the said [*mortgagee*] would advance the further sum of £2,000 in addition to the sums already advanced by him, and that such sum of £2,000, together with the sum of £3,000 being moneys in the hands of the said [*mortgagee*] as consignee of the said estate, and arising from the produce thereof, should be applied in purchasing the bond-debts of £5,000 and of £1,500 hereinbefore mentioned, and the interest due thereon respectively, and the subsisting annuities hereinbefore also mentioned, and the arrears of the said annuity, except the said sum of £150 bequeathed to the said [*annuitant*], and the legacies of £2,000 each bequeathed to the said [*legatees*] as aforesaid, which debts and annuities, when so purchased, should be assigned to a trustee upon the trusts hereinafter mentioned; And that he the said [*mortgagee*] would thereupon accept and take the sum of £9,000 in lieu and full satisfaction, as well of the said sum of £16,000 or upwards so already due to the said [*mortgagee*] as aforesaid, as of the said further sum of £2,000 proposed to be advanced by him for the purpose aforesaid, upon having the said sum of £9,000, and interest, secured by way of mortgage upon the said R. estate as hereinafter is mentioned; to which proposals the said [*mortgagor*] hath consented. And whereas, in consequence of the arrangement so made by the said [*mortgagee*] and [*mortgagor*], proposals have been submitted by the said [*mortgagee*] to the said bond-creditors for £5,000 and £1,500, and to the said subsisting annuitants, for purchasing their said respective debts and annuities, and the arrears of interest and annuities thereon respectively, (except the said annuity of £150 and the aforesaid two legacies of

Creditors satisfied of such insufficiency.

Proposal to mortgagor to undertake the management;

mortgagee making further advances;

to be applied in purchasing bond debts, &c.

Agreement by mortgagee to accept a reduced sum.

Composition and arrangement with two bond-creditors of the testator.

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£2,000 each), with the said several sums of £2,000 and £3,000, to be divided proportionally among them the said bond-creditors and annuitants, (except as aforesaid), according to the amounts of the principals of their several debts, and the values of their annuities, so agreed to be purchased; to which proposals the said bond-creditors, annuitants, and legatees have consented, being sensible that the estates charged therewith are a very inadequate security for their said debts and annuities, notwithstanding the said [*mortgagee*] should fail in establishing his priority of claim or charge in respect of his said debt. AND WHEREAS the said [*mortgagee*] hath accordingly applied the said several sums of £2,000 and £3,000 in purchasing the said several bond-debts and annuities, and the arrears of interest and annuities thereon, (except as aforesaid), and the same have been assigned to the said [*trustee of debts*]; which assignments are set forth or mentioned in the first schedule hereunder written. AND WHEREAS it hath been agreed between the said [*mortgagee*] and [*mortgagor*], that during the continuance of the security intended to be hereby made to the said [*mortgagee*], the annual produce of the said R. estate shall be applied for the purposes and in manner hereinafter mentioned. AND WHEREAS, upon the treaty for and in consideration of the aforesaid arrangement, the said [*annuitants*] agreed, during the continuance of the security intended to be hereby made to the said [*mortgagee*], to accept the several yearly sums hereinafter mentioned, by and out of the annual produce of the R. estate, or so much of such yearly sums respectively as such annual produce should, subject to the previous payments hereinafter directed to be made thereout, extend to pay, in lieu and full satisfaction of the said annuity of £150, and the interest of the said two sums of £2,000 each, which henceforth, during the continuance of the security intended to be hereby made, shall become due and payable, (that is to say), the said [*annuitant of* £150] hath agreed to accept the yearly sum of £80, and the said [*legatee of* £2,000], the yearly sum of £60, and the said [*other legatee*], the like yearly sum of £60. AND it was also agreed, upon the treaty for, and in consideration of, the aforesaid arrangement, and for more effectually executing the intention of the said parties hereto, that, after full payment and satisfaction unto the said [*mortgagee*], his executors, administrators, and assigns, of all principal moneys by these presents secured, or intended

Application of farther advances accordingly.

Agreement that produce of R. estate shall be applied as after mentioned.

Annuitant and legatees agree to take less interest than is due to them during the continuance of the present security.

And also, that annuity and legacies shall be charged exclusively on the R. estate.

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to be secured, to him and them, the whole of the said annuity of £150, and the whole of the said two sums of £2,000, and £2,000, and the interest thenceforth to grow due upon or in respect of the same, should be thenceforth exclusively charged upon and payable out of the said R. estate, in exoneration of the said D. estate. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the above-recited agreement, and for docking, barring, and extinguishing all estates tail, and remainders and reversions thereupon expectant or depending, of and in the plantations, and other hereditaments hereinafter mentioned, and expressed to be hereby granted and released, and for conveying and assuring the inheritance thereof in fee-simple, unto and to the use of the said [*mortgagee*], his heirs and assigns (*d*); *And also* for securing unto the said

Testatum. For barring all entails, &c.

Variation where wife joins, in order to extinguish her dower.

(*d*) As to barring entails in the island of Grenada, *vide ante*, Vol. 2, p. 249 *g*, 2nd ed. If the wife is made a party to the deed, for the purpose of extinguishing her dower, add—

"And in order and to the intent that the said plantations and other hereditaments may be conveyed, discharged of and from all dower, and all other right and title which she the said [*wife*] hath, or could, or might have or claim in, to, or out of the same premises, or any part thereof, the said [*mortgagor*] and [*wife*] his wife *have*, and each of them *hath* granted," &c.

The following is the form of the certificate of acknowledgment before the Lord Mayor of London:—

CERTIFICATE OF ACKNOWLEDGMENT BEFORE THE LORD MAYOR.

MEMORANDUM *of an* ACKNOWLEDGMENT *of a Colonial Deed, before the Lord Mayor.*

BE IT REMEMBERED, that, on the —— day of ——, personally appeared before me, the Right Honourable [*Lord Mayor*], Lord Mayor of the city of London, the within-named [*mortgagor*],* party to the within-written indenture; and the said [*mortgagor*] did then acknowledge before me, that the within-written indenture, and the bargain and sale for a year

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* If the wife be a party, add—

"and —— his wife, parties to the within-written indenture," &c.

[*mortgagee*], his heirs and assigns, payment of the said sum of £9,000, sterling money of Great Britain and Ireland, with

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within mentioned, were his act and deed, and were respectively by him duly executed, in order and to the intent that the same indentures, together with this present acknowledgment, should be effectual for docking, barring, and extinguishing all estates tail, and remainders and reversions thereupon expectant or depending, of and in the plantations and other hereditaments comprised in the said within-written indenture, and therein mentioned to be thereby granted and released, and all other the matters and things intended to be thereby conveyed, and for conveying and assuring the inheritance thereof in fee-simple*. Which I certify under the seal of my office, this —— day of ——, one thousand eight hundred and ——.

[——] MAYOR.

It is usual also to have a

DECLARATION (*now substituted for an Affidavit*) *of Execution by one of the attesting Witnesses.*

AFFIDAVIT OF EXECUTION BY ATTESTING WITNESS.

I, J. F., of &c., do solemnly and sincerely declare, that the indenture of bargain and sale, bearing date the —— day of ——, and the indenture of release, bearing date &c., severally hereunto annexed, and made†, or mentioned to be

* If the wife is a party, for the purposes of barring her dower, add—

"And the said [*wife*], being solely and separately examined, did also acknowledge that the within-written indenture was her act and deed, and was duly executed by her, in order and to the intent that the hereditaments comprised in the said indenture might be so conveyed and assured, discharged of and from all dower, and all other right and title which she the said [*wife*] had or could or might have, or claim in, to, or out of the same premises, or any part thereof," &c.

Variation where wife is a party, for the purpose of barring her dower.

† If the parties to the bargain and sale and release are different, say—

"The bargain and sale being made or mentioned to be made between A. B., of &c., of the one part, and C. D., of &c., of the other part; and the release being made or mentioned to be made" &c.

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interest, at the time and in manner hereinafter mentioned, in lieu and in full satisfaction of and for all principal and

made, between A. B., of &c., of the one part, and C. D. and E. F., of &c., of the other part, were duly signed, sealed, and delivered by the said [——], party thereto, in the presence of [*other attesting witness*] and me the said [*declarant*], on the —— day of ——. And I further declare, that the names E. B. and J. F. thereto subscribed and set as witnesses to the execution thereof, are respectively of the proper handswriting of the said [*other witness*] and of me the said [*declarant*]. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an act made and passed in the 5th and 6th years of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal an Act of the present Session of Parliament, intituled, An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths, and to make other provisions for the Abolition of unnecessary Oaths."

TAKEN in London, the ——
day of ——, before me

[——] MAYOR.

LORD MAYOR'S CERTIFICATE *of a Declaration being duly made.*

LORD MAYOR'S CERTIFICATE OF DECLARATION BEING DULY MADE.

TO ALL TO WHOM these presents shall come, I, A. B., Lord Mayor of the city of London, in pursuance of an act of Parliament made and passed in the fifth year of the reign of his late Majesty King George the Second, intituled "An Act for the more easy recovery of debts in his Majesty's plantations and colonies in Amercia;" and also of an act made and passed in the fifth and sixth years of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present session of Parliament, intituled, An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute declara-

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interest moneys due and owing to him from or on account of the plantations and other hereditaments hereinafter mentioned (*e*), *and* in consideration of five shillings, &c., the said [*mortgagor*], *hath* granted, bargained, sold, released, and confirmed, and by these presents *doth* &c., unto the said [*mortgagee*], (in the actual possession of the said [*mortgagee*], by virtue of a bargain and sale &c., *ut ante*, Vol. 5, p. 535), and to his heirs, executors, administrators, and assigns, ALL THAT plantation or estate called R. estate, situate, lying, and being in the parish of Saint John, in the island of Grenada, &c., &c. And also all mules, cattle, and live stock now being and belonging to, or which shall hereafter, during the continuance of the security hereby made,

Mortgagor grants and assigns,

Parcels,

and all mules, &c.

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tions in lieu thereof, and for the more entire abolition of voluntary and extra-judicial Oaths, and to make other provisions for the Abolition of unnecessary Oaths," respectively, do hereby certify, that, on the day of the date hereof, personally came and appeared before me, J. F., of ——, the person named in the declaration hereunto annexed, being a person well known and worthy of good credit: and solemnly and sincerely declared to be true the several matters and things mentioned and contained in the said annexed affidavit.

IN faith and testimony whereof, I, the Lord Mayor, have caused the seal of the office of mayoralty of the city of London to be hereunto put and affixed, and the indentures of bargain and sale and release mentioned and referred to in and by the said declaration, to be hereunto also annexed. DATED in London, the —— day of &c.

[*Mayoralty Seal.*]

(*e*) Where a sum of money is advanced by the mortgagees in certain proportions, say—

" in consideration of the sum of £——, of &c., lent and advanced by the said [*mortgagees*] to the said [*mortgagor*], at or immediately before the execution of these presents, in the proportion following, (that is to say), the sum of £——, part thereof, by the said [*one mortgagee*], and the sum of £——, the residue of the said sum of £——, by the said [*other mortgagee*], the receipt and payment" &c.

Variation where money is advanced by mortgagees in certain proportions.

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be upon or belong to the said plantations and hereditaments respectively; and all mills, stills, coppers, plantation implements and utensils, and dead stock, now upon or belonging to, and which shall hereafter, during the continuance of the security hereby made, be purchased for, or be upon, or belong to, the same plantations and hereditaments, or any part thereof; *And also* all gardens, orchards, lands, meadows, pastures, feedings, ways, paths, emoluments, hereditaments, and appurtenances to the said plantations and hereditaments belonging, or in anywise appertaining, or therewith used or occupied or enjoyed, and the issues and profits of the said plantations, hereditaments, and premises; *And* all the estate, right, title, interest, property, claim, and demand, of the said [*mortgagor*] (*f*) in, to, and out of the said premises. To HAVE AND TO HOLD the said plantations, hereditaments, and all other the premises expressed to be hereby granted and released, with their appurtenances, unto the said [*mortgagee*], his heirs, executors, administrators, and assigns. To THE USE of the said [*mortgagee*], his heirs, executors, administrators, and assigns, respectively, for ever, according to the nature and quality of the same premises respectively, *Subject nevertheless* to the proviso and agreement hereinafter contained for redemption of the same premises, (that is to say), PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said [*mortgagor*] and [*mortgagee*], that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and do well and truly pay unto the said [*mortgagee*], his heirs, executors, administrators, or assigns, at or in the common Dining Hall of Lincoln's Inn, in the county of Middlesex, the sum of £9,000 of lawful money of Great Britain and Ireland, on the —— day of ——, which will be in the year ——, together with interest for the same in the meantime, after the rate of five pounds for every one hundred pounds by the year (*g*); And also all

and all mills;

and also all gardens,

and all the estate:

Habendum.

To the use of the mortgagee in fee.

Proviso for redemption.

(*f*) If the wife is a party, add—

Variations.

"and [*wife*], his wife, respectively."

(*g*) When the principal is to be paid to different mortgagees, insert these words—

"in the shares and proportions following, (that is to say), the sum of £——, part thereof, unto A. B.," &c.

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such other sum and sums of money (*h*), as the said [*mortgagee*], his executors, administrators, or assigns, shall or may hereafter lay out, pay, or advance, for the purchasing or providing cattle or stores for working and improving the said plantations and estates, or either of them, or for the repairing or making good any damage that may be done thereto, by hurricanes, fire, or domestic or foreign enemies, or otherwise, to the use, or upon the account of the said [*mortgagee*], his heirs, executors, or administrators, together also with interest for the same, respectively, after the rate aforesaid, to be computed from the time or respective times of payment or advancement of the said sums respectively (such further sum or sums of money and interest to be respectively paid by the said [*mortgagor*], his executors, administrators, or assigns, within the space of six calendar months next after the same shall be so lent or advanced respectively) without making any deduction, defalcation, or abatement whatsoever, out of the said sum of £9,000, or the interest thereon, or of any part thereof, or out of any such further sum or sums of money as aforesaid, or any of them, or the interest thereon, for or in respect of any taxes, or upon any other account, Then, and in such case, the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall and will at any time thereafter, at the request, costs, and charges, in the law of the said [*mortgagor*], his heirs or assigns, release, convey, and assure all and singular the plantations, hereditaments, and premises expressed to be hereby granted and released, with their and every of their rights, members, and appurtenances, [and all the estate, right and interest of the said [*mortgagee*], his heirs, executors, administrators, and assigns, in or to the same, under or by virtue of these presents, unto and to the use of the said [*mortgagor*], his heirs, executors, administrators, or assigns, or as he or they shall direct or appoint, free from all incumbrances made, done, executed, or committed by the said [*mortgagee*], his heirs, executors, administrators, or assigns, or any person or persons claiming or to claim, by, from, through, or under, or in trust for him or them]. And the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his heirs, executors, admi-

(*h*) If so intended, add—

"not exceed in the whole the sum of £——."

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nistrators, and assigns, in manner following, (that is to say), That he the said [*mortgagor*], his heirs, executors, or administrators, shall and will well and truly pay unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £9,000, and such further sum or sums of money as aforesaid, with interest for the same after the rate aforesaid, and at, upon, or within the days or times, and in manner hereinbefore appointed for payment thereof respectively, without any deduction, defalcation, or abatement whatsoever, except as aforesaid, according to the form and effect of the aforesaid proviso and agreement, and to the true intent and meaning of these presents. AND LIKEWISE, (*Add covenants for title, &c., ut ante,* Vol. 5, *p.* 556, *omitting the words, in the covenant for further assurance, expressing that the assurances are to be at the costs of purchasers after sales. Add also usual proviso for quiet enjoyment by mortgagor until default*). AND the said [*mortgagor*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant and agree with the said [*mortgagee*], his heirs, executors, administrators, and assigns, that he the said [*mortgagor*], his heirs, executors, administrators, and assigns, shall and will from time to time, and at all times during the continuance of the mortgage security hereby made to the said [*mortgagee*], keep up, maintain, and preserve in good order and condition, as many or more or as great or greater number of houses, edifices, erections, store-houses, still-houses, mills, and other buildings, coppers, vessels, stills, and other goods, chattels, utensils, implements and things, horses, mules, and cattle, upon the plantations, lands, and hereditaments hereby granted and released, or intended so to be, as are now standing, remaining, or being thereon respectively, or used or occupied with the same, for the convenient and proper working, management, cultivation, and use of the said several plantations, lands, and hereditaments, in a good planter-like condition, and to the best advantage: [AND ALSO that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will, within —— calendar months after the execution of these presents, at his or their own costs and charges, cause and procure the same to be registered or inrolled and recorded, according to the laws and customs of the island of Grenada.] AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*mortgagee*], his executors, administrators, and

Covenant by mortgagor for payment of the principal and interest moneys.

Covenant by mortgagor that he has good right to convey, &c.

Covenant by mortgagor to keep up the plantation buildings, and stock;

and that mortgagor will procure deed to be inrolled.

Mortgagor covenants to consign the produce of the es-

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assigns, that he the said [*mortgagor*], his heirs, executors, administrators, and assigns, shall and will, from time to time, and at all times hereafter, during the continuance of the mortgage security hereby made, and until the principal sums of money and interest intended to be hereby secured shall be fully paid off and discharged, yearly and every year, send, ship, and consign, or cause to be sent, shipped, and consigned, all the sugars and other produce of and to arise and be made from or upon the plantations, hereditaments, and premises expressed to be hereby granted and released, (except so much of the rum to be produced from the said plantations and premises as shall be necessary and sufficient to answer and pay the taxes, duties, and incidental charges payable in the said island of Grenada, from time to time, in respect of the same plantation, hereditaments, and premises respectively), unto such person or persons as the said [*mortgagee*], his executors, administrators, or assigns, shall direct or appoint as factor or factors, to be by him or them sold and disposed of to the best advantage, to the intents and for the purposes hereinafter mentioned; (that is to say) (*i*), *To the intent* and purpose that the person or

tate to factors appointed by the mortgagee until the mortgage money is paid off;

and that the factors shall dispose of the moneys arising from the produce in the following manner; (that is to say)

(*i*) Where the consignee is to be nominated by several mortgagees, who advance their money in certain proportions, and the produce to be consigned is also to be applied in paying the interest of a prior incumbrance, this clause may be expressed as follows:—

Variation in proviso as to consignment of produce, where there are several mortgagees and a prior mortgage.

"PROVIDED ALWAYS, *and it is hereby agreed and declared between and by the said parties hereto,* and it is the true intent and meaning of them and these presents, that it shall be lawful for the said [*mortgagees*] respectively, and their respective executors, administrators, and assigns, (if they shall think proper), from time to time, or at any time or times during the continuance of the security intended to be hereby made, to nominate and appoint any person or persons to be a consignee or receiver, consignees or receivers, of all and every the coffee, sugars, produce, and annual profits of, or to arise or to be made from, upon, or in respect of, all and singular the plantations and premises hereinbefore mentioned, and intended to be hereby conveyed and assured; And that, in case the said [*mortgagees*] respectively, or their respective executors, administrators, or assigns, shall not agree in the joint appointment of any person or persons to be a consignee or receiver, consignees or receivers, of the said coffee, sugars,

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persons to whom the said [*mortgagee*], his executors, administrators, or assigns, shall appoint or direct the said profits, and produce, as aforesaid, then it shall be lawful for each of them the said [*mortgagees*] respectively, or their respective executors, administrators, or assigns, to nominate and appoint any person or persons to be consignee or receiver, consignees or receivers, of one moiety* of the said coffee, sugars, and annual produce of the same plantations and premises; And it is hereby agreed and declared, that, in case of any such nomination and appointment as aforesaid, the sugars, profits, and annual produce of the said plantations and estates shall be consigned and sent over to the person or persons who shall be appointed consignee, &c., of the said plantations and premises, during the continuance of the appointment or appointments so to be made as aforesaid, to be sold and disposed of from time to time, to and for the intents and purposes hereinafter mentioned; And the said [*mortgagor*] for himself, (*&c., covenants with* [*mortgagees*], *their &c.*), that he the said [*mortgagor*], his heirs, executors, administrators, and assigns, shall and will, from time to time, and at all times during the continuance of the security intended to be hereby made, upon notice in writing being given to him or them, or left at his or their usual place or places of residence or abode, of the appointment of any such consignee, &c., yearly and every year send, ship, and consign, (*as in the precedent in the text, ante*, p. 18): To the intent, &c., that is to say), in the first place, by and out of the next moneys to arise by such sale or sales, from time to time, to pay and satisfy all and every the sum and sums of money which shall accrue or become due and owing for commission, insurance, freight, duties, and incidental expenses occasioned by or on account of the premises, and, in the next place, by and out of the moneys to arise by such sale or sales, from time to time, to pay and keep down the yearly interest due and to grow due upon or in respect of the said mortgage so made to the said [*prior mortgagee*], for the sum of £——, as aforesaid; and after such payments and deductions as aforesaid, to the intent and purpose, that, by and out of the surplus of

Application of moneys by consignee.

* Or other share, according to the proportion in which they have advanced the mortgage-moneys.

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sugars and produce of the said plantations, hereditaments, and premises to be shipped or consigned as aforesaid, shall and do, in the first place, by and out of the net moneys to arise and be produced by such sale or sales from time to time, pay and satisfy so much and such part of the incidental charges and expenses which shall from time to time become payable or be incurred in the said island of Granada, in respect of the same plantations and premises, as the same rum to be produced therefrom shall be insufficient to pay and satisfy: And also retain, to pay and reimburse himself and themselves, all and every the sum and sums of money which shall accrue and become due and owing to him or them for stores, supplies, commissions, insurance, freight, duties, and incidental charges or expenses occasioned by or on account of the premises; And, by and out of the net moneys yearly to arise by such sale or sales, yearly and every year, during the continuance of the security hereby made, shall and do pay or cause to be paid unto the said [*mortgagor*], if he shall so long live, one annuity or clear yearly sum of £400, of lawful money, &c., by four equal payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, without any deduction or abatement whatsoever for taxes, or otherwise howsoever; the first quarterly payment of the said annuity or yearly sum of £400 to be paid on the —— day of —— next, if any such net moneys shall have then been derived or produced from such consignments as aforesaid; but, if no such moneys shall be then in his or their hands,

First, pay incidental charges, &c.;

and retain all their costs;

and pay an annuity of 400*l.* to mortgagor.

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the moneys to arise by the sale and disposition of the said coffee, sugars, and other produce, as aforesaid, the interest to arise and become due and payable for or in respect of the moneys intended to be hereby secured, or so much thereof as shall from time to time remain due and unpaid, shall and may be paid and satisfied unto them the said [*mortgagees*], respectively, and their respective executors, administrators, and assigns, when and as the same shall arise and become due and payable, and that the surplus, if any, of the moneys to arise by such sale and disposition as aforesaid, after the several payments and deductions aforesaid, shall and may be paid to, or to the use or order of, the said [*mortgagor*], his heirs, executors, administrators, or assigns, or as he or they shall direct or appoint."

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then as soon afterwards as the same, or a sufficient part thereof, shall be produced from such sale or sales as aforesaid: *And*, in case the said [*mortgagor*] shall die during the continuance of the security hereby made, shall and do, thenceforth, during the continuance of the said security, pay unto the executors or administrators of the said [*mortgagor*], one annuity or clear yearly sum of £300 of like money, by equal quarterly payments on the days hereinbefore mentioned, in every year, without any deduction or abatement, except as aforesaid; the first quarterly payment to be made on such of the said quarterly days of payment as shall first happen after the decease of the said [*mortgagor*]; but, if no such net moneys shall then be in his or their hands, then as soon afterwards as the same or a sufficient part thereof shall be produced from such sale or sales as aforesaid: *And* shall and do, in the next place, by and out of the net moneys so yearly to arise or be produced from such sale or sales, (subject to the payment of the said annuity or yearly sum of £400, or (as the case may be) the said annuity or yearly sum of £300, hereinbefore directed to be paid to the said [*mortgagor*], or to his executors or administrators, respectively, as aforesaid), from time to time keep down the yearly interest to grow due upon or in respect of the said principal sum of £9,000, and such other sum and sums of money as may be advanced by the said [*mortgagee*], his executors, administrators, or assigns, for any of the purposes aforesaid, and respectively intended to be hereby secured to the said [*mortgagee*], his executors, administrators, and assigns, as aforesaid, or so much as such net moneys will extend to pay and satisfy; such interest to be paid yearly, on the —— day of —— in every year; and from and after such payments and deductions as aforesaid, then shall and do, by and out of the net moneys so yearly to arise or be produced from such sale or sales, pay, unto the said [*annuitant*], during the continuance of the security intended to be hereby made, if she shall so long live, one annuity or yearly sum of £80 sterling; and also to the said [*legatee*], her executors, or administrators, during the continuance of the aforesaid security, one annuity or yearly sum of £60 sterling; and unto the said [*other legatee*], her executors, or administrators, during the continuance of the aforesaid security, a like annuity or yearly sum of £60: such annuities of £80, and £60, and £60 each to be respectively paid, free from taxes, and without any other deduction whatsoever: *And* in case

And if the mortgagor dies during the continuance of this security, to pay an annuity of 300*l.* to his executors;

and next, keep down the interest of the 9,000*l.*, mortgage-money;

and next pay the annuitant and two legatees the reduced interest, which they agree to take during the continuance of this security.

If there is not

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the surplus net moneys so yearly to arise and be produced from such sale or sales shall not in any year or years extend to pay the whole of the three lastly-mentioned annuities of £80, £60, and £60, or such of them as shall be then payable, then the same lastly-mentioned annuitants shall, in every year in which there shall be such deficiency, be paid equally, *pari passu*, according to the extent of such surplus moneys so proving deficient: Such annuities or yearly sums of £80, £60, and £60, respectively, to be paid by quarterly payments, on the —— day of ——, &c., in each year; the first &c. ensuing, or as soon thereafter as the said [*mortgagee*], his executors or administrators, or the person or persons so to be appointed by him as receiver or receivers, consignee or consignees, as aforesaid, shall be enabled to make such payments, or any part thereof, by and out of such surplus net moneys; *And* from and after the several payments and deductions aforesaid, to the intent that the person or persons to whom the said [*mortgagee*], his executors, administrators, or assigns, shall direct or appoint the produce of the said plantations, lands, and hereditaments to be consigned as aforesaid shall and do, by and out of such yearly net moneys as aforesaid, (in case the same shall be more than sufficient to answer the purposes aforesaid), yearly and every year, pay over any such surplus moneys unto the said [*mortgagee*], his executors, administrators, or assigns, in or towards payment and reduction of the principal sum of £9,000 intended to be hereby secured to him and them as aforesaid, and such other sum and sums of money as aforesaid, until the whole of the said principal moneys shall be paid off and discharged, or otherwise satisfied. *And it is hereby agreed between* the said parties hereto, and particularly the said [*annuitant*] and [*legatees*] do hereby respectively consent and declare, that the plantations and premises expressed to be hereby granted and released shall henceforth remain and be exclusively charged with the payment of the said annuity of £150 to the said [*annuitant*], and of the said two sums of £2,000 and £2,000 and the interest thereof respectively; But so, nevertheless, that the said annuities or yearly sums of £80 to the said [*annuitant*], and £60 to each of the said [*legatees*], so hereinbefore directed to be paid to them respectively as aforesaid, or so much thereof, respectively, as the aforesaid annual produce will extend to pay under the trusts and directions aforesaid, shall,

sufficient moneys left to pay the said reduced annuities, then they are to be paid *pari passu* so far as the money will extend.

And to apply the remainder of such moneys in reduction of the principal sum of 9,000*l.* and such other sums as aforesaid, until the whole are paid off.

Covenant by the annuitant and two legatees, that, although the mortgaged premises shall be charged with the original incumbrances, yet they will take the said reduced interest, in lieu of legal interest, during the continuance of the present security.

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during the continuance of the security intended to be hereby made, be accepted and taken in lieu and full satisfaction of the said annuity of £150, and the arrears thereof, and the interest of the said sums of £2,000 and £2,000, which henceforth during the continuance of the security intended to be hereby made (but no longer) shall become due and payable. PROVIDED ALWAYS, that, after full payment and satisfaction unto the said [*mortgagee*], his executors, administrators, or assigns, of all principal and interest moneys hereby, or intended to be hereby, secured to him and them, the said [*annuitant*], if then living, shall thenceforth be entitled to receive and recover by and out of the plantations and premises expressed to be hereby granted and released, and the rents and profits thereof, the whole of the said annuity of £150 which shall, after that time, become due and payable; And the said [*legatees*], their executors or administrators, shall thenceforth be entitled to receive and recover, by and out of the rents, issues, and profits thereof, the whole of the interest which, after payment of such principal and interest moneys to the said [*mortgagee*], his executors, administrators, or assigns, as aforesaid, shall become due and payable upon or in respect of the said sums of £2,000 and £2,000, and also the whole of the said principal sums respectively: AND the said [*annuitant*] doth hereby, for herself, her heirs, executors, and administrators, and so far as relates to her said annuity of £150, and her acts and deeds, but no further or otherwise; And the said [*legatee*], for herself, her heirs, executors, and administrators, so far as concerns her own acts and deeds, and the said principal sum of £2,000 bequeathed to her, and the interest thereof, but not further or otherwise; And the said [*other legatee*] doth hereby, for herself, her heirs, executors, and administrators, and so far as concerns her own acts and deeds, and the said principal sum of £2,000 bequeathed to her as aforesaid, and the interest thereof, but not further or otherwise, covenant and agree with the said [*mortgagee*], his executors, administrators, and assigns, and also with the said [*mortgagor*], his heirs, executors, administrators, and assigns, in manner following; (that is to say), That they the said [*annuitant*] and [*legatees*] respectively, and their respective executors, administrators, and assigns, and every other person and persons claiming, or to claim, by, from, through, under, or in trust for them respectively, shall not, nor will, at any

Proviso, that, after the expiration of this present security, annuitant shall be entitled to receive the full annuity, and the legatees the full interest of their legacies.

Covenant by the annuitant and legatees not to enforce their claims against the D. estate.

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time or times hereafter, bring, commence, or prosecute any action, suit, or other proceeding, at law or in equity, or make any claim or demand for recovering or compelling payment of the said annuity or yearly sum of £150, or any part thereof, or the said principal sums of £2,000 and £2,000, or either of them, or any part thereof respectively, or the interest thereon respectively, by, out of, or from the said estate, called the D. estate, or any of the owners, occupiers, or proprietors thereof respectively: *And also*, that, during the continuance of the security intended to be hereby made to the said [*mortgagee*] as aforesaid, and so long as the sugars and annual produce of the plantation and premises expressed to be hereby granted and released shall be applied and disposed of upon the trusts and in the manner aforesaid, they the said [*annuitant*] and [*legatees*] respectively, and their respective executors, administrators, and assigns, and every other person or persons claiming or to claim by, from, through, or in trust for them respectively, shall not, nor will, at any time or times during the continuance of the security intended to be hereby made, bring, commence, or prosecute any action, suit, or other proceeding, at law or in equity, for recovering and compelling payment of, or otherwise touching or concerning, the said annuity or yearly sum of £150, or any part thereof, or the said principal sums of £2,000 and £2,000, or either of them, or of any part thereof, respectively, or the interest thereon, or on either of them, out of, from, or against the plantations and premises expressed to be hereby granted and released, or by, from, or against the said [*mortgagor*], his heirs, executors, administrators, or assigns, or the said [*mortgagee*], his heirs, executors, administrators, or assigns, in respect thereof, *But*, nevertheless, without prejudice to the payment, and the right of enforcing payment, of the said annuities or yearly sums of £80, £60, and £60, under the trusts and directions aforesaid: AND, in consideration of the premises, the said [*mortgagee*] doth hereby, for himself, his heirs, executors and administrators, covenant and agree with the said [*annuitant*] and [*legatees*] respectively, and their respective executors and administrators, that the said three several annuities or yearly sums of £80, £60, and £60, respectively, shall henceforth, during the continuance of the security intended to be hereby made, be well and truly paid unto the said [*annuitant*] and [*legatees*], their executors, administrators, or assigns, by, with, and out of the net

Also, that they will not attempt to recover the annuity and legacies during the continuance of the present security; but without prejudice to the enforcing payment of the reduced payments hereby secured to them.

Covenant by the mortgagee that the reduced payments shall be punctually made to the annuitant and legatees.

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moneys so to arise from or be produced by such sale or sales as aforesaid, or as far as the same net moneys will extend, pursuant to the directions hereinbefore contained, and in manner and form hereinbefore mentioned, according to the true intent and meaning of these presents. AND *it is hereby agreed and declared between and by the said parties hereto*, and particularly the said [*mortgagee*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagor*], his heirs, executors, administrators, or assigns, that, if the said [*mortgagor*], his heirs, executors, administrators, or assigns, or his or their agents, managers, or servants, do and shall, yearly and every year, send, ship, and consign the sugars and other produce of, or to arise from, the plantations and premises expressed to be hereby granted and released, pursuant to the covenant hereinbefore contained on his part, Then, and in such case, the said [*mortgagee*], his heirs, executors, administrators, and assigns, shall not, nor will, bring, commence, or prosecute any action, suit, or other proceeding, either for obtaining the possession of the said plantations, hereditaments, and premises, or for foreclosing the equity of redemption thereof, or upon the covenant hereinbefore contained for payment of the said principal moneys and interest, or for the further assurance of the premises after default as aforesaid, until the end of the term of ten years, to be computed from the date hereof. But it is hereby agreed and declared between and by the said parties to these presents, that if, at any time during the said term of ten years, default shall be made by the said [*mortgagor*], his heirs, executors, administrators, or assigns, or his or their agent, manager, or servants, in the sending, shipping, and consigning the sugar and other produce of the said plantations and premises, contrary to the covenant hereinbefore contained on his and their parts, and the true intent and meaning of these presents; then, and in such case, it shall be lawful for the said [*mortgagee*], his heirs, executors, administrators, or assigns, at any time or times thereafter, to bring, commence, and prosecute any action, suit, or other process, for recovering the principal and interest moneys intended to be hereby secured, and which shall be then due, or any part thereof, or upon any of the covenants, clauses, and agreements therein contained, as he or they shall think proper or be advised.

Covenant by mortgagee, that, if mortgagor consigns produce, &c., he will not call in mortgage-money for ten years.

Further *testatum*:

AND THIS INDENTURE FURTHER WITNESSETH,

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that, in pursuance of the above-recited agreement, and in consideration of the premises, it is hereby agreed and declared between and by the said parties hereto, the said [*trustee of debts*], his executors, administrators, and assigns, shall henceforth stand possessed of, and interested in, the said several debts and sums of money, annuities, and legacies, and arrears of annuity and interest, so assigned to him and them as aforesaid, (the particulars of which are mentioned in the schedule hereunder written), and the benefits and advantage of the charges or liens in respect of the same respectively, upon and for the trusts, intents, and purposes hereinafter mentioned; (that is to say), As to, for, and concerning one-third part of the residue of the said debts and sums of money, annuities, legacies, and arrears, IN TRUST, in the first place, for the said [*mortgagee*], his executors, administrators, and assigns, for the further and more effectually securing unto him and them payment of the said sum of £9,000 and interest, in manner hereinbefore mentioned; and, from and after payment of the said sum of £9,000 and interest, and subject thereto, IN TRUST for the said [*mortgagor*], his heirs, executors, administrators, and assigns, and in order that the same may attend and go along with the said plantations, lands, hereditaments, and premises, as a protection to the same from all mesne charges and incumbrances, if any such there be; AND as to, for and concerning the remaining two-third parts of the said sums of money, debts, annuities, legacies, and arrears, IN TRUST for the said [*mortgagee*], his heirs, executors, administrators, and assigns, and to attend upon the said part or share late of the said [*testator*], deceased, of and in the said D. estate, as a protection to the same from all mesne charges and incumbrances, if any such there be: AND, in consideration of the security intended to be hereby made to the said [*mortgagee*] for the said sum of £9,000, and interest, as aforesaid, the said [*mortgagee*] doth, by these presents, release, exonerate, and discharge, as well the plantations, hereditaments, and premises expressed to be hereby granted and released, as also the said [*mortgagor*], his heirs, executors, administrators, and assigns, in respect thereof, of and from all debts and sums of money due and owing to him the said [*mortgagee*] from the estate and effects of the said [*testator*], deceased, upon or on account of the plantations, hereditaments, and premises expressed to be hereby granted and released, or any part thereof,

that trustee shall stand possessed of certain incumbrances as follows; (that is to say),

one-third, in the first place, for the more effectually securing the mortgage-money;

and then for mortgagor as protection to the estates contained in this mortgage-deed:

and as to the other two-thirds,

in trust, as protection to the D. estate.

Mortgagee discharges mortgagor of all other debts due to him in right of the said testator, or otherwise.

35. WEST INDIA MORTGAGE, WITH SPECIAL PROVISIONS.

(except the said sum of £9,000, and without prejudice to the security intended to be hereby made for the same as aforesaid): *And, lastly,* the said [*mortgagor*] and [*mortgagee*] do, and each of them doth, nominate, constitute, and appoint [*attorney*], of &c., and [*other attorney*], of &c., or any one of them, the true and lawful attorneys and attorney of them the said [*mortgagor*] and [*mortgagee*], and each of them respectively, to acknowledge this indenture and the indenture of bargain and sale for a year hereinbefore referred to, before the Registrar of deeds in the said island of Granada, or his lawful deputy for the time being, as and for their respective acts and deeds, in order that the same may be duly inrolled and recorded, as the laws of the said island require and direct; and to do and execute every other act, deed, matter, or thing which shall be requisite or necessary for giving effect and validity to these presents, and the said indenture of bargain and sale. IN WITNESS &c.

Power to register the deed.

SCHEDULE to which the preceding indenture refers. (*Here follows a list of securities of creditors*).

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36. SUB-MORTGAGE.

36. ASSIGNMENT, *by Way of* MORTGAGE, *of a* DEBT *and* CONVEYANCE *in Fee of* LANDS, *respectively vested in the present Grantor as Mortgagee, (being a Mortgage of a Mortgage, or Sub-mortgage), with usual Power of Attorney, &c.*

Parties.

THIS INDENTURE, &c., BETWEEN [*mortgagors*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. (*Recite mortgage by* [A. B.] *to the present mortgagors for securing the payment of* £3,000 *and interest*).

Recital of agreement for a loan.

AND WHEREAS the said [*mortgagee*], at the request of the said [*mortgagors*], hath consented to advance and lend to them the sum of £2,000, the re-payment of which, with interest, it hath been agreed shall be secured by way of mortgage, in the manner hereinafter expressed.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £2,000, of lawful British money, to the said [*mortgagors*] in hand, on

36. SUB-MORTGAGE.

Receipt.

or before the execution hereof, paid by the said [*mortgagee*], (the receipt and payment of which said sum of £2,000 the said [*mortgagors*] do, and every of them doth, hereby acknowledge, and from the same and every part thereof do, and doth, acquit, release, and for ever absolutely discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns), they the said [*mortgagors*] *have*, and every of them *Hath*, bargained, sold, assigned, transferred, and set over, and by these presents *Do*, &c., unto the said [*mortgagee*], his executors, administrators, and assigns, *All that* the said principal sum of £3,000, or thereabouts, or other the principal sum or sums so remaining due from the estate of the said A. B., upon the hereinbefore mentioned securities as aforesaid, and all and singular other the principal moneys to which the said [*mortgagors*], or any or either of them, are or is entitled by virtue of the several instruments and assurances hereinbefore mentioned and recited, or any or either of the same instruments and assurances, and all interest due and to grow due for the same principal moneys; *And all* bonds, bills, and other securities for the same principal moneys and interest; And all the right, title, trust, interest, property, benefit, claim, and demand whatsoever, at law and in equity, of them the said [*mortgagors*], and of every, or any, or either of them, in, to, out of, or upon the moneys, securities, and premises hereinbefore assigned, or intended so to be, and every or any part thereof. AND the said [*mortgagors*] do, and every of them doth, by these presents, irrevocably nominate, constitute, and appoint the said [*mortgagee*], his executors, administrators, and assigns, to be the true and lawful attorney and attorneys of them the said nominating parties, and of every of them, with full power and authority in the names or name of them the said nominating parties, or of any or either of them, or in the name or names of the said attorney or attorneys, to call in, ask, demand, sue for, recover, and receive, the principal moneys and interest hereinbefore assigned, and every or any part thereof respectively, and to give, sign, and execute proper and effectual receipts and acquittances and discharges for the same, and, if the said attorney or attorneys shall think proper so to do, to appoint a substitute or substitutes for the purposes aforesaid, they the said [*mortgagors*], and every of them, hereby agreeing to ratify and confirm whatever acts, matters, and things their said attorney or attor-

Mortgagors assign unto mortgagee a mortgage debt of 3,000*l.*,

and all securities, &c.

Appointment of mortgagee as attorney to receive and recover debt.

36. SUB-MORTGAGE.

neys, or his or their substitute or substitutes, shall lawfully do or cause to be done in or about the premises by virtue hereof: To HAVE, HOLD, receive, and take the said principal moneys and interest, and all and singular other the premises hereinbefore by these presents assigned, or intended so to be, unto and by the said [*mortgagee*], his executors, administrators, and assigns, for his and their own absolute benefit, in as full, ample, and beneficial a manner, to all intents and purposes whatsoever, as the said [*mortgagors*], or any or either of them, might or could have held and enjoyed the same premises, if these presents had not been made, *Subject nevertheless* to the proviso or agreement hereinafter contained for the redemption of the same premises. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement in this behalf, and for the considerations aforesaid, and in consideration of the sum of 10*s.*, of &c., to the said [*mortgagors*] in hand paid by the said [*mortgagee*] upon or immediately before the execution hereof, (the receipt &c.), they the said [*mortgagors*] *have*, and every of them *hath*, granted, bargained, sold, aliened, released, and confirmed, and by &c. *Do*, &c., unto the said [*mortgagee*], his heirs and assigns, (in the actual possession &c., *ut ante*, p. 31), All that the said messuage or tenement commonly called or known by the name of ——, with all and singular the lands and hereditaments whatsoever thereunto belonging, or therewith held and enjoyed, situate, lying, and being in the parishes of &c., in the county of ——, containing by estimation —— acres, or thereabouts, be the same more or less; And also all timber and other trees, woods, underwoods, and the ground and soil thereof, pastures, feedings, ways, paths, passages, waters, and water-courses, profits, commodities, privileges, advantages, and appurtenances whatsoever, to the messuage or tenement, lands, hereditaments, and premises hereinbefore granted and released, or intended so to be, or to any of them, or any part thereof, belonging or in anywise appertaining, or therewith held and enjoyed: *And* the reversion and reversions, remainder and remainders, rents, issues, and profits of the messuage or tenement, lands, hereditaments, and premises hereinbefore released and assured, or intended so to be, and of every part thereof; *And all* the estate, right, title, trust, use, inheritance, interest, property, possession, benefit, claim, and demand what-

Habendum.

(Subject to the proviso for redemption.)

Further *testatum.*

Release by mortgagors.

Parcels.

General words.

Reversions.

And all the estate, &c.

soever, at law and in equity, of the said [*mortgagees*], and every, or any, or either of them, in, to, or out of the same messuage or tenement, lands, hereditaments, and premises, and every or any part thereof; Together with all deeds, instruments, and writings whatsoever, regarding or affecting the title to the said messuage or tenement, lands, hereditaments and premises, and being now in the custody or possession of them the said [*mortgagors*], or any or either of them, or which they or any or either of them can obtain without any action or suit. To HAVE AND TO HOLD the messuage or tenement, lands, hereditaments, and premises hereinbefore by these presents released, or intended so to be, unto the said [*mortgagee*], his heirs and assigns, To THE ONLY PROPER USE and behoof of him the said [*mortgagee*], his heirs and assigns, *Subject nevertheless* to such right or equity of redemption, if any, as is now subsisting in the said premises, under or by virtue of the hereinbefore-recited indenture of mortgage; And subject also to the proviso or agreement next hereinafter contained for the redemption of the same premises; (that is to say), PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that, if the said [*mortgagors*], their heirs, executors, administrators, or assigns, do and shall, on the —— day of ——, which will be in the year ——, well and truly pay unto the said [*mortgagee*], his executors, administrators, or assigns, at or in &c., the full sum of £2,000, and do and shall, in the meantime, well and truly pay unto the said [*mortgagee*], his executors, administrators, or assigns, interest for the same sum of £2,000, at the rate of £—— per centum per annum, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, without any deduction or abatement for or in respect of taxes, or any other matter, cause, or thing whatsoever, Then and in such case, and immediately thereupon, the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall and will, upon the request, and at the costs and charges of the said [*mortgagors*], their heirs, executors, administrators, or assigns, re-assign the principal moneys and interest hereinbefore assigned, and the securities for the same, unto the said [*mortgagors*], their executors, administrators, and assigns, and re-convey and assure the messuage or tenement, lands, hereditaments, and premises hereinbefore released, or intended so to be, with their appurtenances,

36. SUB-MORTGAGE.

All deeds, &c.

Habendum.

in fee,

to the use of mortgagee,

subject to subsisting equity of redemption.

Proviso for redemption.

36. SUB-MORTGAGE.

to such uses and in such manner as they the said [*mortgagors*], their heirs, executors, administrators, or assigns, shall direct or appoint, exonerated and discharged from all lien, charge, claim, and demand whatsoever, of or by him the said [*mortgagee*], his heirs, executors, administrators, or assigns, [or any person or persons lawfully claiming by, from, through, under, or in trust for him or them, or any of them].

Joint and several covenant to pay principal and interest moneys.

And the said [*mortgagors*], for themselves jointly, their heirs, executors, and administrators, *do*, and every of them for himself severally, and his respective heirs, executors, and administrators, *doth*, hereby covenant and agree with the said [*mortgagee*], his executors, administrators, and assigns, that they the said [*mortgagors*], their heirs, executors, administrators, or assigns, shall and will, on the —— day of ——, which will be in the year ——, at &c., well and truly pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £2,000, and shall and will, in the meantime, at the place aforesaid, well and truly pay unto the said [*mortgagee*], his executors, administrators, or assigns, interest for the said sum of £2,000, at the rate of £—— per centum per annum, from the date hereof, by equal half-yearly payments, on the —— day of ——, and the —— day of ——, in every year, without any deduction or abatement whatsoever, in respect of taxes, or for any other matter or thing whatsoever.

Covenants for title.

And the said [*mortgagors*] do for themselves, jointly, and their heirs, executors, and administrators, and every of them doth for himself severally, and his respective heirs, executors, and administrators, covenant and agree with the said [*mortgagee*], his heirs, executors, administrators, and assigns, by these presents, in manner following; (that is to say), that they the said [*mortgagors*] now have in themselves, or some one of them have or hath in themselves or himself, good right, full power, and lawful and absolute authority, to assign the aforesaid mortgage-debt or sum of £3,000, and the interest thereon, and the securities for the same, unto the said [*mortgagee*], his executors, administrators, and assigns, and to grant, bargain, sell, alien, release, and confirm the messuage or tenement, lands, hereditaments, and premises hereinbefore released, or intended so to be, unto and to the use of the said [*mortgagee*], his heirs, executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And further*, that it shall be lawful for the

For quiet enjoyment.

said [*mortgagee*], his heirs, executors, administrators, and assigns, from time to time, and at all times after default shall happen to be made in payment of the sum of £2,000, intended to be hereby secured, or the interest thereon, or any part thereof, respectively, contrary to the aforesaid proviso and covenant for payment of the same, peaceably and quietly to enter into and upon, and thenceforth, at all times thereafter, to hold, possess, and enjoy, the same hereditaments and premises, with the appurtenances, and to receive and take the rents and profits thereof to and for his and their own use and benefit, without any lawful [let, suit, trouble, denial, hinderance, eviction, ejection, molestation, disturbance, or] interruption whatsoever, of, from, or by them the said [*mortgagors*], or any or either of them, or any other person or persons whomsoever; *And that*, free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by him the said [*mortgagee*], his heirs, executors, or administrators, well and sufficiently saved, defended, and kept harmless and indemnified of, from, and against all and all manner of [former and other gifts, grants, bargains, sales, leases, assignments, mortgages, jointures, dower, right and title of dower, uses, trusts, wills, intails, statutes, recognizances, judgments, extents, executions, annuities, rents, arrears of rent, forfeitures, re-entries, cause and causes of forfeiture and re-entry, and of, from, and against all and singular other] estates, rights, titles, charges, and incumbrances whatsoever, [had, made, done, committed, executed, or willingly or knowingly suffered, by them the said [*mortgagors*], or any or either of them, or any other person or persons whomsoever], (except, nevertheless, the right or equity of redemption (if any) subsisting under or by virtue of the hereinbefore-recited indenture of mortgage): *And moreover* that the said [*mortgagors*], and their respective heirs, executors, and administrators, and all and every persons and person having or lawfully claiming any estate, right, title, charge, or interest whatsoever, in, to, or out of the hereditaments and premises hereinbefore released and assigned, or intended so to be, (except as aforesaid), shall and will, from time to time, and at all times hereafter, so long as any sum or sums of money shall remain owing to the said [*mortgagee*], his heirs, executors, administrators, or assigns, by virtue of these presents, (upon every request of the said [*mortgagee*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*mortgagors*], their heirs, exe-

36. SUB-MORTGAGE.

Free from incumbrances.

Further assurance.

36. SUB-MORTGAGE.

cutors, administrators, or assigns), make, do, and execute, or cause &c., all such further and other lawful acts, deeds, conveyances, and assurances in the law whatsoever, for further, better, more perfectly, absolutely, and effectually granting, releasing, conveying, and assuring the hereditaments and premises hereinbefore released and assigned respectively, or intended so to be, unto and to the use of the said [*mortgagee*], his heirs, executors, administrators, and assigns, according to the true intent and meaning of these presents, as by him the said [*mortgagee*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably required. PROVIDED NEVERTHELESS, and it is hereby agreed and declared between and by the said parties to these presents, that, in the meantime, and until default shall happen to be made in payment of the sum of £2,000 intended to be hereby secured, or the interest thereon, or of some part of the same principal and interest respectively, on some or one of the days or times mentioned in the aforesaid proviso and covenant for payment of the same, and the true intent and meaning of these presents, it shall be lawful for the said [*mortgagors*], their heirs, executors, administrators, and assigns, according to their respective estates, rights, and interests therein, peaceably and quietly to hold, possess, and enjoy the hereditaments and premises hereinbefore released and assigned respectively, or intended so to be, and to receive and take the rents, interest, and profits thereof to and for their own respective use and benefit, without any [let, suit, trouble, denial, eviction, ejection, molestation, disturbance, or] interruption whatsoever, of, [from], or by the said [*mortgagee*], his heirs, executors, administrators, or assigns, [or any person or persons lawfully claiming by, from, through, under, or in trust for him or them, or any or either of them, anything hereinbefore &c. notwithstanding]. PROVIDED ALSO, *and it is hereby further agreed and declared* between and by the said parties to these presents, [and particularly the said [*mortgagors*] do, and each of them doth, hereby covenant and declare], that if the interest of the sum of £2,000 intended to be hereby secured, or any part thereof, shall at any time be in arrear or unpaid for the space of six calendar months next after any of the days or times hereinbefore appointed for payment thereof, or if default shall be made in payment of the said principal sum of £2,000, or any part thereof, for the space of twelve calendar months

Proviso for quiet enjoyment by mortgagors, until default.

Power of sale in case of default of payment of interest or principal after a certain time.

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next after the time hereinbefore appointed for payment of the same principal sum, then, and in either of the said cases, it shall be lawful for the said [*mortgagee*], his heirs, executors, administrators, or assigns, (subject nevertheless to such equity of redemption (if any) as shall be then subsisting in the said premises, by virtue of the hereinbefore-recited indenture of mortgage), to make sale, and absolutely dispose of the said mortgage-debt or sum of £3,000, and interest, hereinbefore assigned, or intended so to be, and also of the said hereditaments and premises, or any part or parts thereof, with the appurtenances, unto any person or persons, either by public auction or private contract, and either together or in parcels, for such price or prices in money, and in such manner, as to him or them shall appear advisable and proper; and also to purchase in the same at any auction or auctions, and re-sell the same at any future auction or auctions, or by private contract, without being answerable for any loss or deficiency to be occasioned thereby, and also to vary the terms of, or wholly rescind any contract for sale which may be entered into. *And it is hereby agreed and declared* between and by the said parties to these presents, that the said [*mortgagee*], his heirs, executors, administrators, or assigns, shall stand possessed of and interested in all the moneys to be produced by any such sale or sales as aforesaid, after defraying thereout all the costs, charges, and expenses incidental to or attending the carrying of the same sale or sales into effect, IN TRUST to retain to and pay himself and themselves, the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £2,000, intended to be hereby secured, and all interest which shall be for the time being due in respect thereof, (whether the time hereinbefore appointed for the payment of the said principal sum shall have arrived, or not); And IN TRUST, after satisfying the purposes aforesaid, to pay the residue and surplus of the said moneys unto the said [*mortgagors*], their executors, administrators, or assigns, according to their respective interests therein. (*Declaration that sales shall be binding on mortgagors, ut ante*, p. 70: *And mortgagee's receipts to discharge purchasers, ut ante*, p. 48). PROVIDED ALWAYS, *and it is hereby declared and agreed by and between the said parties to these presents*, that it shall not be incumbent on the said [*mortgagee*], his heirs, executors, administrators, or assigns, to call for payment of the principal sum of £3,000

Declaration of trusts of purchase-money.

Declaration, that it shall not be incumbent on mortgagee to sue.

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and interest hereby assigned, or intended so to be, from the said [*original mortgagor*], his heirs, executors, administrators or assigns, or to bring any action or actions, or otherwise take or institute any proceeding or proceedings, against him or them, or against the hereditaments and premises respectively hereinbefore released and assigned, or intended so to be, by virtue of these presents or any power or authority herein contained, unless he the said [*mortgagee*], his heirs, executors, or administrators, shall think proper so to do; it being the intention of the said parties that the said [*mortgagee*], his heirs, executors, or administrators, shall not incur any responsibility by reason of any loss or injury which may arise by means of his or their neglect or delay to put in force any or either of the securities so assigned to him and them as aforesaid, any rule of law or equity to the contrary notwithstanding (*a*). IN WITNESS &c.

(*a*) See, as to the utility of a clause of this nature, *ante*, Vol. 5, p. 295.

37. APPOINTMENT AND ASSIGNMENT BY FEME COVERT AND HER SON.

37. APPOINTMENT *by a* FEME COVERT *of Rents payable to her for her separate Use* (*b*) *during her Life, for securing the Interest of a Sum advanced to her Son;* ASSIGNMENT *by the Son of his* SHARE *of the* PURCHASE-MONEY *to arise from a* SALE *of the Lands after his Mother's Death; And* ASSIGNMENT *of a* POLICY *of* INSURANCE *effected on his Life by way of mortgage, for securing Money advanced to the Son.*

Parties.

THIS INDENTURE, of four parts, made the —— day of ——, 18—; BETWEEN A. B., of ——, Esquire, a captain

(*b*) As to the separate property of married women, *vide* title SETTLEMENTS.

37. APPOINTMENT AND ASSIGNMENT BY FEME COVERT, AND HER SON.

in the service of the Honourable the East India Company (*b*), of the first part; [*mortgagor's mother, a feme covert, and her husband, and mortgagor*], of &c., of the second part; [*trustees*], of &c., of the third part; and [*mortgagor*], of &c., of the fourth part. WHEREAS, [*testatrix*], late of ——, deceased, being seised to her and her heirs in fee-simple of the hereditaments situate in ——, in the county of ——, hereinafter described, and having surrendered the copyhold parts thereof to the use of her will (*c*), by her will, bearing date on or about the —— day of ——, 18—, among other things, gave and devised in the words or to the effect following: that is to say: (*Recite devise in will verbatim, whereby the lands in question were devised to trustees, in trust to pay the rents to the mortgagor's mother for her separate use for life, and after her decease, upon trust for sale, and to pay the moneys arising therefrom to her child or children, who should be living at her decease*). AND WHEREAS the said [*testatrix*] died shortly after the date of her said will, without having revoked or altered the same, and the said will was duly proved by [*executor*], one of the executors therein named, in the Prerogative Court of the Archbishop of Canterbury, on or about the —— day of ——. AND WHEREAS the said [*mortgagor*] and [*other child*] are the only two children of the said [*mother*], and it is probable, on account of her advanced age, that she will not have any other issue. AND WHEREAS the said [*mortgagor*] hath effected in his own name, in the —— Insurance Office, a policy or instrument, under the hands and seals of ——, numbered ——, and bearing date on or about the —— day of ——, whereby the sum of £—— is insured to be paid to the executors, administrators, or assigns of the said [*mortgagor*], in case he should die in the lifetime of the said [*mortgagor's mother*] (*d*). AND WHEREAS the said [*mortgagee*], at the request of the said [*mortgagor*], hath

Recital of will of last owner.

Death of testatrix.

That mortgagor's mother has only two children.

Policy of insurance.

Recital of agreement for loan.

(*b*) By stat. 3 & 4 Will. 4, c. 85, s. 111, this title is substituted for the old title of "The United Company of Merchants of England trading to the East Indies."

(*c*) As to surrenders of copyholds to the uses of wills, *vide ante*, Vol. 3, p. 532, 2nd ed.; and now see 7 Will. 4 & 1 Vict. c. 26, ss. 3, 4.

(*d*) As the bequest to the mortgagor was contingent on his surviving his mother, it is obvious that the security of the mortgagee only required that the policy should assure the money on the contingency of the mortgagor dying in her lifetime.

Life-insurance on a contingency.

37. APPOINTMENT AND ASSIGNMENT BY FEME COVERT, AND HER SON.

agreed to lend to him the sum of £——, upon the security of an appointment or assignment by the said [*mother*] of the rents of the said freehold and copyhold hereditaments which shall become due during her life; and likewise of an assignment of the share of the said [*mortgagor*] of the money to arise from a sale to be made of the said freehold and copyhold hereditaments: and by an assignment of the policy of insurance so effected by the said [*mortgagor*] as aforesaid; And the said [*mortgagor's mother's husband* (*e*)] and [*mother*], his wife, are willing and have consented to give effect to the said intended security. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £—— of lawful British money, advanced and lent by the said [*mortgagee*] to the said [*mortgagor*] immediately before the execution of these presents, with the privity and approbation of the said [*mother's husband*], and [*mother*], his wife, testified by their severally executing these presents, [which said sum of £—— is, and is to be deemed and considered as, the sole and exclusive debt of the said [*mortgagor*]], the receipt of which said sum of £—— the said [*mortgagor*] doth hereby acknowledge, and therefrom doth acquit, release, and for ever discharge the said [*mortgagee*], her heirs, executors, and administrators; And also, in consideration of ten shillings of like lawful money at the same time paid by the said [*mortgagee*] to the said [*mother*], the receipt whereof is hereby acknowledged, the said [*mother*], at the request of the said [*mortgagor*], and with the privity and consent of the said [*trustees*], and also of the said [*mother's husband*], her husband (*f*), testified by their severally executing these presents, hath directed,

Testatum:

In consideration of mortgage-money advanced to mortgagor,

mortgagor's mother, at the request of mortgagor, and with the privity of her husband,

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Concurrence of the husband not necessary.

(*e*) Where a wife mortgages or sells her separate estate, the concurrence of the husband is not necessary to give effect to the instrument, but is sometimes required for the purpose of obtaining a covenant from him that his wife has not incumbered, as her coverture incapacitates her from entering into such a covenant.

Concurrence of the trustees, for what purposes only useful.

(*f*) The concurrence of the trustees was not essential in the present case to the validity of the assurance either of the mother or son. The only possible advantage to be derived from making the trustees parties was, that they might be fixed with notice by this means; (as to the necessity of notice to trustees, *vide ante*, Vol. 5, p. 458); and probably, too, their concurrence would be considered as implying an assertion that they had not received notice of any other incumbrance. As to this, *vide ante*, Vol. 5, p. 474.

limited, and appointed, and also assigned and transferred, *And* by these presents *Doth* direct, &c., to the said [*mortgagee*], her executors, administrators, and assigns, ALL the rents and profits which henceforth shall become due and payable from the said freehold and copyhold hereditaments devised in and by the hereinbefore recited will, during the life of the said [*mother*]; And all the right, title, and interest, both at law and in equity, of the said [*mother*], in or to the same rents and profits: TO HAVE, HOLD, receive, and enjoy, the said rents, profits, and all and singular other the premises hereby assigned, or intended so to be, unto the said [*mortgagee*], her executors, administrators, and assigns, [with full power and authority to and for the said [*mortgagee*], her executors and administrators, to use the name or names, and act as the attorney or attorneys of the said [*mother*], in recovering and enforcing payment of the rents and profits hereby assigned or otherwise assured, or intended so to be, and giving acquittances and discharges for the same (*g*).] AND *it is further agreed and declared*, that the said [*mortgagee*], her executors, administrators, and assigns, shall stand and be possessed of the rents and profits hereby assigned of the said freehold and copyhold hereditaments, UPON TRUST, from time to time, to answer and defray the costs and expenses of continuing the said insurance, or, if the same should cease or be discontinued, of making and keeping on foot any other insurance on the life of the [*mortgagee*] for a sum not exceeding the sum of £——: AND UPON FURTHER TRUST to satisfy and keep down the interest on the said sum of £——, at the rate of £5 for £100 for a year, so long as the same sum of £—— shall remain due on the present security; and, after payment of the same insurance-money and interest, UPON TRUST, from time to time to pay the surplus or residue of the same rents and profits to the said [*mother*], in the same manner, and for the same purposes, as the same respectively were applicable, immediately before her execution of these presents. AND the said [*mother's husband*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*mortgagee*], her

37. APPOINTMENT AND ASSIGNMENT BY FEME COVERT, AND HER SON.

appoints and assigns to mortgagee all the rents accruing to her from the devised lands.

Habendum to mortgagee.

Declaration of trust of rents so assigned.

First to pay expenses of keeping up insurance;

and then to pay interest on mortgage-money.

Covenant by appointor's husband, that she has not incumbered.

(*g*) This authority may be properly omitted, as the assignment without it is quite sufficient to authorize the mortgagee to call upon the trustees to pay the rents to her.

Power of attorney not necessary.

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executors and administrators, that the said [*mother*], his wife (*h*), hath not at any time or times heretofore, made, done, executed, committed, or willingly or knowingly suffered, any act, deed, matter, or thing whatsoever, by means whereof the rents and profits hereby assigned, or intended so to be, or any part thereof, are, is, can, shall, or may be impeached, charged, incumbered, or in anywise affected, in any manner howsoever. AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations hereinbefore expressed, He the said [*mortgagor*], with the privity and approbation of the said [*trustees*], testified as aforesaid, *Hath* granted, bargained, sold, assigned, and transferred, and by these presents *Doth* grant, &c., unto the said [*mortgagee*], her executors, administrators, and assigns, *All and every* sum and sums of money, rents, profits, and interest, which shall become due and payable to the said [*mortgagor*], under or by virtue or means of the hereinbefore in part recited will; *And also* the hereinbefore recited instrument or policy of insurance, and all and every sum and sums of money which shall become due and payable by virtue of the same instrument or policy of insurance; *And* all the right, title, and interest, both at law and in equity, of the said [*mortgagor*], in and to the same sums of money, policy of insurance, and premises: TO HAVE, HOLD, receive, and enjoy the said sum and sums of money, policy of insurance, and all and singular other the premises lastly hereby assigned, or intended so to be, unto the said [*mortgagee*], her executors, administrators, and assigns, henceforth, as her and their absolute property; AND with full power and authority to and for the said [*mortgagee*], her executors, and administrators, to use the name or names, and act as the attorney or attorneys, of the said [*mortgagor*], his executors or administrators, in recovering and enforcing the benefit of the said instrument or policy of insurance, or any other or renewed instrument or policy of insurance, and the payment of the said sum and sums of money, and other the premises lastly hereby assigned, or intended so to be, and giving acquittances and discharges for the same.

Further *testatum*.

Mortgagor assigns moneys payable to him under the recited will;

and also the policy of insurance.

Habendum.

With power to mortgagee to receive and recover moneys.

(*h*) In the draft from which this precedent was taken, the husband's covenant was made to extend to his own acts; but, as he could not, by such acts, affect his wife's interest, it is inaccurate so to frame the covenant.

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Declaration of trusts of moneys to be received by mortgagee.

AND *it is hereby directed, declared, and agreed*, that the said [*mortgagee*], her executors, administrators, or assigns, shall stand possessed of the said sum and sums of money, policy of insurance, and other the premises lastly hereby assigned, or intended so to be; UPON TRUST, in the first place, to defray the costs, charges, and expenses attending the execution of the trusts hereby created, and of continuing or keeping on foot the said policy of insurance, or of making and keeping on foot any other or like assurance as aforesaid: AND UPON FURTHER TRUST to retain the said principal sum of £—— so lent and advanced as aforesaid, and the interest thereon at the rate aforesaid, or so much of the same principal sum and interest as shall remain unpaid; And as to the residue of the said trust-moneys and premises, UPON TRUST to pay or transfer the same unto the said [*mortgagor*], his executors, administrators, and assigns, and upon and for no other trust, end, intent, or purpose whatsoever. AND it is hereby further declared and agreed, that every person paying to the said [*mortgagee*], her executors, administrators, or assigns, any sum or sums of money, by virtue of the power or in the execution of the trusts hereinbefore contained, shall be exempt from all responsibility in respect of the application thereof by her or them. AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*mortgagee*], her executors and administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, shall or will pay unto the said [*mortgagee*], her executors or administrators, the said principal sum of £——, and interest thereon at the rate of £5 per cent. per annum, on the —— day of —— next, without any deduction or abatement on any account whatsoever; *And also* (*to keep on foot policy, &c., ut ante*, p. 56); AND that he the said [*mortgagor*] at any time hereafter shall not nor will do any act by which the same policy of insurance may be released or discharged, or the benefit of the same cease or determine, or the right of the said [*mortgagee*], her executors, administrators, or assigns, to receive the sum and sums of money thereby or to be thereby secured, be affected, impeached, interrupted, or incumbered; *And also* that the several principal and other sums of money, interest, and property, respectively hereby assigned or otherwise assured by him the said [*mortgagor*], or intended so to be, are now wholly due and un-

Indemnity to persons paying trust-moneys.

Covenant by mortgagor to pay principal and interest;

not to vacate insurance;

that the principal and other sums are due;

37. APPOINTMENT AND ASSIGNMENT BY FEME COVERT, AND HER SON.

that mortgagor has power to assign.

satisfied; *And also*, that the said [*mortgagor*] now hath in himself full and absolute authority to assign the same principal and other sums of money, interest, and property, and the said policy or instrument of insurance, respectively hereby assigned by him the said [*mortgagor*] or intended so to be, in manner aforesaid, according to the true intent and meaning of these presents, and free from all charges and incumbrances whatsoever; *And further*, that he the said [*mortgagor*], his executors or administrators, shall not, at any time or times hereafter, without the consent in writing of the said [*mortgagee*], her executors or administrators, or the order, judgment, or decree of some court of law or equity, receive, release, or discharge all or any part of the principal or other moneys, policy of insurance, and property hereby assigned or intended so to be; nor, without such consent, order, judgment, or decree, revoke or countermand all or any of the powers and authorities hereinbefore contained; *And moreover* that he the said [*mortgagor*], his executors and administrators, and all persons rightfully claiming any estate, right, title, or interest in the premises hereby assigned by him the said [*mortgagor*], or intended so to be, will and shall, from time to time and at all times hereafter, upon every request of the said [*mortgagee*], her executors, administrators, or assigns, and at the costs and charges of the said [*mortgagor*], his executors or administrators, make, do, and execute, or cause to be made, done, and executed, all such further acts, deeds, assignments, powers, authorities, and assurances whatsoever for the more effectually assigning or assuring unto, or vesting in, the said [*mortgagee*], her executors, administrators, and assigns, and authorizing and empowering her or them to receive and obtain payment of the principal and other sums of money, policy of insurance, and other property, respectively hereby assigned, or intended so to be, upon the trusts and for the intents and purposes hereinbefore expressed concerning the same, as by the said [*mortgagee*], her executors, administrators, or assigns, shall be reasonably required (*i*). IN WITNESS &c.

Not to receive or discharge moneys assigned, or revoke power.

And for further assurance.

(*i*) For the reasons mentioned, *ante*, Vol. 5, p. 295, it seems to be prudent to add a clause to this effect:—

Mortgagee not

"PROVIDED ALWAYS, *and it is hereby declared and agreed*,

that the said [*mortgagee*], her executors, administrators, or assigns, shall not incur any responsibility to the said [*mortgagor*], his heirs, executors, or administrators, by reason of the neglect or delay of the said [*mortgagee*], her executors, administrators, or assigns, to call for or enforce the payment from the said [*trustees*], or the survivor of them, his heirs, executors, or administrators, or other the trustees or trustee for the time being of the hereinbefore recited will of the said [*testator*] deceased, of the moneys hereby assigned, or intended so to be, or any part thereof; or by reason of the neglect or delay of the said [*mortgagee*], her executors, administrators, or assigns, to call for or enforce the payment of the moneys which shall or may become payable by virtue of the policy of insurance hereinbefore assigned, or any part thereof, any rule of law or equity to the contrary notwithstanding."

37. APPOINTMENT AND ASSIGNMENT BY FEME COVERT, AND HER SON.

to be liable for neglect in calling for payment of moneys assigned.

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38. CONVEYANCE *in* FEE *to* TRUSTEES, *in* TRUST *for* IMMEDIATE SALE, *to secure Moneys due upon a* SUBSISTING MORTGAGE, *and* COSTS *incurred by certain* PROCEEDINGS *at* LAW *and in* EQUITY, *in relation to such* MORTGAGE. *Costs to be ascertained by Trustees as between Attorney and Client.* ASSIGNMENT *by* MORTGAGEE *of* TERM *to* ATTEND *the* INHERITANCE. (*Variation where* MORTGAGE TERM *is* SURRENDERED; *Also where it is* ASSIGNED *by a* SEPARATE DEED, *upon Trust to attend the Inheritance*).

38. IN TRUST FOR SALE TO SECURE MONEYS DUE ON A SUBSISTING MORTGAGE, AND COSTS.

THIS INDENTURE, made the —— day of ——, in the year of the Christian æra ——, BETWEEN [*heir of mortgagor*], of &c., of the first part; [*heir of trustee*], of &c., of the second part; [*executor of mortgagee*], of &c., of the third part; [*trustees for sale*], of &c., of the fourth part; and [*trustee of term*], of &c., of the fifth part. WHEREAS, by indenture of lease and release and appointment, bearing date respectively on or about the —— and —— days of ——, the release and appointment being made between A. B., of the first part; [*husband of mortgagor*], of &c., and

Parties.

Recital of settlement.

38. IN TRUST FOR SALE TO SECURE MONEYS DUE ON A SUBSISTING MORTGAGE, AND COSTS.

[*mortgagor*], his wife, of the second part; and [*trustee*], of &c., of the third part; and by virtue of a fine sur cognizance de droit come ceo, &c., acknowledged and levied by the said [*husband*] and [*mortgagor*] unto the said [*trustee*] and his heirs, in the Court of Common Pleas, at Westminster, in or as of —— Term, in the year ——: *All* and singular the messuages and other hereditaments, situate and being in ——, and hereinafter described and intended to be hereby released, with the appurtenances, were conveyed and assured unto and *To the use* of the said [*trustee*], his heirs and assigns, *Upon trust*, at all times thereafter, to make and execute such grants, conveyances, and assurances of the same hereditaments, as the said [*mortgagor*], whether coverte or sole, should by any deed or deeds, writing or writings, to be executed by her, and attested by one witness or more, or by such her last will, or any codicil thereto, as is therein mentioned, direct or appoint; *And* in default of and subject to any such direction or appointment, *To the use* of the said [*mortgagor*], her heirs and assigns, for ever. AND WHEREAS, by an indenture of mortgage, bearing date on or about the —— day of ——, and made between the said [*trustee*], of the first part; and the said [*husband*] and [*mortgagor*], his wife, of the second part; and [*mortgagee*], of the third part, (and executed by the said [*mortgagor*], conformably to the requisitions of her above-recited power); *In consideration* of the sum of £—— to the said [*husband*] and [*mortgagor*], his wife, paid by the said [*mortgagee*], as therein mentioned, He the said [*trustee*], at the request and by the direction of the said [*husband*] and [*mortgagor*], his wife, did bargain, sell, and demise, *And* the said [*mortgagor*], the wife of the said [*husband*], did direct and appoint unto the said [*mortgagee*], her executors, administrators, and assigns, *All* and singular the messuages and other hereditaments comprised in the hereinbefore recited indentures, and therein and hereinafter particularly described, and intended to be hereby released, with the appurtenances; *To hold* the same unto the said [*mortgagee*], her executors, administrators, and assigns, thenceforth for the term of one thousand years, *But subject nevertheless* to a proviso therein contained for making void the same term on payment by the said [*husband*] and [*mortgagor*], his wife, or either of them, their or either of their heirs, executors, administrators, appointees, or assigns, unto the said [*mortgagee*], her executors, admi-

Recital of mortgage.

nistrators, or assigns, of the sum of £——, with interest for the same at the rate of £5 per centum per annum, on the —— day of —— then next ensuing, and which indenture of mortgage hereinbefore recited bears an ad valorem stamp of £—— (*a*). And whereas the said principal sum and interest were not paid on the day mentioned in the proviso contained in the hereinbefore recited indenture. And whereas the said [*trustee*] died in or about the month of ——, without having, by will or otherwise, disposed of the legal estate of inheritance so conveyed to and vested in him of and in the before-mentioned messuages and other hereditaments in trust as aforesaid, leaving the said [*heir of trustee*], his heir-at-law, him surviving. And whereas the said [*heir of trustee*] is the eldest son of the said [*deceased trustee*] and [*wife*], his wife, and was baptized at the parish church of ——, on the —— day of ——; And the said [*deceased trustee*] and [*wife*], his wife, were duly married at the parish church of ——, on the —— day of ——. And whereas the said [*mortgagee*] died on or about the —— day of ——, having made and duly published her last will and testament in writing, bearing date on or about the —— day of ——, and appointed the said [*executor*] executor thereof, who, upon her death, proved the said will in the Episcopal Consistorial Court of Norwich. And whereas the said [*mortgagee*] having left bona notabilia or effects to the value of one hundred shillings and upwards in two distinct dioceses, the probate of her will so granted by the said Episcopal Consistorial Court of Norwich was void, for want of jurisdiction in the same court, and the probate of the said will ought to have been granted by the Prerogative Court of the Archbishop of Canterbury; and the said [*executor*], as the executor thereof, hath accordingly caused the said will to be removed into the said last-named court, wherein he has duly proved or intends to prove the same will (*b*). And whereas the said [*mortgagor*]

38. IN TRUST FOR SALE TO SECURE MONEYS DUE ON A SUBSISTING MORTGAGE, AND COSTS.

That principal remains due, and an arrear of interest.

Death of trustee of settlement.

Baptism, &c., of heir.

Death of mortgagee.

That will of mortgagee was proved in the wrong court.

(*a*) The fact of the mortgage-deed bearing an *ad valorem* duty is mentioned, in order to shew that the present deed, being a mere further security for the same money, is exempt. *Vide ante*, Vol. 5, pp. 524, 542.

(*b*) As an executor may assign before probate, it was not necessary that the will should be proved in the proper court before the present deed was executed; *vide ante*, Vol. 2, p. 644, 2nd ed.; but, where practicable, it is always better to prove the will first.

38. IN TRUST FOR SALE TO SECURE MONEYS DUE ON A SUBSISTING MORTGAGE, AND COSTS.

survived the said [*husband*], her husband, who died in or about the month of ——, in the year ——, and afterwards departed this life in or about the month of ——, 18—, without having made any further appointment or disposition of the aforesaid messuages and other hereditaments, either by deed, will, or otherwise, whereupon the same messuages and hereditaments descended (subject to the said mortgage) to him the said [*heir of mortgagor*], as the heir-at-law of the said [*mortgagor*], the said [*heir*] being the only son of the said [*mortgagor*] by ——, her husband, with whom she intermarried on the —— day of ——, in the parish church of ——; and which said [*heir*] was baptized in the same parish church on the —— day of ——:

Death of mortgagor without further appointment, and descent of the mortgaged lands to her only son.

Recital of proceedings by ejectment, and suit of foreclosure.

AND WHEREAS the said [*executor of mortgagee*], being desirous of having the moneys due on the above-recited security paid to him, and having applied to the said [*heir of mortgagor*], to whom the said premises had then descended as aforesaid, for the payment thereof, without being able to obtain the same in or about —— Term, ——, commenced an action of ejectment against the tenants of the said [*heir of mortgagor*] then in possession of the said mortgaged premises, in the said Court of Common Pleas, to recover possession thereof; *And also*, on or about the —— day of ——, the said [*executor of mortgagee*] filed his bill of complaint against the said [*heir of mortgagor*], in the High Court of Chancery, for the purpose of foreclosing the equity of redemption in the same mortgaged premises; *And* in the said action of ejectment, (which was brought on the demise of the said [*executor*] against the tenants of the said [*heir of mortgagor*], then in possession of the said premises), the said [*executor*] obtained judgment, and afterwards took possession of the said premises, under an execution by virtue thereof; *And* in the said suit in equity the said [*heir of mortgagor*] has caused an appearance to be entered, but has not yet put in his answer thereto.

Agreement to suspend proceedings, and execute the present deed.

AND WHEREAS, in order to prevent further proceedings in the said suit in equity, and the increase of costs consequent thereupon, and the final and unconditional foreclosure of his equity of redemption, he the said [*heir of mortgagor*] hath offered and proposed to convey and assure the said mortgaged premises under the said [*trustees for sale*], and their heirs, *In trust* to sell the same, and with the purchase-moneys to pay off the said mortgage-debt and costs, in manner hereinafter men-

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tioned; and to which the said [*executor*] hath consented and agreed, and hath accordingly agreed not to take any further proceedings in the said suit in equity instituted by him as aforesaid. AND WHEREAS there is now due an arrear of interest on the aforesaid principal sum of £——, from the —— day of ——, besides the costs of the legal and equitable proceedings aforesaid, and other expenses, but the precise amount of which cannot at this time be conveniently ascertained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the above-recited agreement, and in consideration of the premises, and also in consideration of ten shillings, &c., the said [*heir of trustee*], at the request and by the direction, as well of the said [*heir of mortgagor*] as of the said [*executor of mortgagee*], testified by their severally executing these presents, *Hath* bargained, sold, and released, and by these presents *Doth* bargain, &c., and the said [*heir of mortgagor*], at the request and by the direction of the said [*executor*], testified as aforesaid, *hath* granted, bargained, sold, aliened, released, and confirmed, *And* by these presents *doth* grant, &c. (*c*), unto the said [*trustees for sale*], and their heirs, (in the actual possession of the said [*trustees for sale*] now being, by virtue of a bargain and sale to them thereof made by the said [*heir of trustee*] and [*heir of mortgagor*], &c.) ALL THAT (*describe parcels, with general words*); *And* the reversion and reversions, remainder and remainders, yearly and other rents and profits of the said messuages and other hereditaments: *And* all the estate, right, title, interest, use, trust, property, benefit, claim, and demand whatsoever, both at law and in equity, of the said [*heir of trustee*] and [*heir of mortgagor*],

Principal and interest due.

Testatum.

Heir of mortgagor, &c., at the request of executor of deceased mortgagee, conveys to trustees for sale.

Parcels,

And all the estate, &c.

(*c*) If the term created by the former mortgage is to be merged in the inheritance, add—

"And to the intent that the residue of the said term of one thousand years, created by the hereinbefore-recited indenture of mortgage, may become merged and utterly extinguished in the freehold and inheritance of the hereditaments hereby released or otherwise assured, or intended so to be, the said [*executor of mortgagee*] *Hath* assigned, surrendered, and yielded up, and by these presents *doth*" &c.

Variation, where term is surrendered.

The advantage of keeping the term on foot is, that it protects against judgments, dower, &c., subsequent to its creation; and therefore the preservation of the term is often a prudent precaution.

Where surrender of term proper.

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Habendum, To such uses as trustees for sale shall appoint;

respectively, in, to, and upon the same hereditaments: To HAVE AND TO HOLD the said messuages, and all other the hereditaments hereby released, or intended so to be, unto the said [*trustees for sale*], and their heirs, for ever: To THE USE of such person and persons, and for such estates, intents, and purposes, as the said [*trustees for sale*], or the survivor of them, in the exercise of the trust for sale hereinafter contained, by any deed or deeds to be executed by them or him, in the presence of, and attested by, one witness or more, shall direct or appoint (*d*); and in default of such direction or appointment, and in the mean time, until any such direction or appointment shall be made, To THE ONLY USE of them the said [*trustees for sale*], their heirs and assigns, for ever: *But nevertheless*, upon and for the trusts, intents, and purposes hereinafter declared concerning the same, that is to say, UPON TRUST, that they the said [*trustees for sale*], or the survivor of them, or his heirs, or their or his assigns, do and shall forthwith enter into the possession or receipt of the rents and profits of, and with all convenient speed absolutely sell and dispose of, the messuages and other hereditaments hereby released, or intended so to be, either together or in parcels, and either by public sale or private contract, without the consent or concurrence of the said [*heir of mortgagor*], his heirs, executors, administrators, or assigns, unto any person or persons whomsoever, for the best price or prices in money that can or may be reasonably obtained for the same, and under and subject to such conditions and stipulations as shall be deemed expedient, with full liberty to buy in and re-sell, or offer to sell again, as often as shall be thought proper, and to rescind or vary the terms of any contract for sale which may have been entered into; *And* do and shall, for the purposes aforesaid, enter into, make, and

And in default of appointment to them in fee,

Upon trust for immediate sale.

As to giving mortgagees a power of appointment.

(*d*) It is not usual to give mortgagees a power of appointment; but such a power may very usefully be introduced, as it enables a mortgagee, who has a trust for sale, to convey the property to a purchaser by appointment simply. And even in the case of mortgages unaccompanied by a trust for sale, such a power is often very convenient in enabling the mortgagee to re-convey the estate when the mortgage is paid off, or to vest the estate in a transferree*, by a single deed, which, in small transactions, is important. *Vide ante*, Vol. 5, p. 502.

* *Vide* precedent of such a transfer, *infra*.

execute, all necessary contracts with, and conveyances to, the purchaser or purchasers of the said premises, or as he, she, or they shall direct. (*Sales to be binding on heir of mortgagor, and receipt of trustees to discharge purchasers*): AND *it is hereby agreed and declared* between and by the parties hereto, that the said [*trustees for sale*], their heirs or assigns, shall stand possessed of the moneys to arise from the sale or sales of all or any of the messuages and other hereditaments hereby directed to be sold as aforesaid, and the rents and profits henceforth arising therefrom, until the same shall be sold, (and which rents and profits may be received, under or by virtue of these presents, without prejudice to the exercise of the aforesaid trust for sale), upon and for the trusts, intents, and purposes following, that is to say, UPON TRUST thereout, in the first place, to retain to themselves all costs and expenses attending such sale or sales as aforesaid, or the receipt or recovery of the said rents and profits, or otherwise to be incurred in the execution of the trusts hereby declared; and, in the second place, to pay to the said [*executor*], his executors, administrators, or assigns, or other the personal representative for the time being of the said [*deceased mortgagee*] deceased, the aforesaid principal sum of £——, so due to him the said [*executor*] in her right as aforesaid, together with all interest and arrears of interest, which now are, or hereafter shall or may be due thereon; *And also* all the costs, damages, and expenses attending the non-payment thereof, and which have already been, or hereafter shall or may be, sustained or incurred by the said [*executor*], his executors, administrators, or assigns, or other the personal representative for the time being of the said [*deceased mortgagee*] deceased, in or about the aforesaid action of ejectment and suit in equity, and each of them respectively, or in any other manner howsoever; such costs, damages, and expenses to be paid as between attorney and client; with full power and authority for the said [*trustees for sale*], or the survivor of them, his executors or administrators, to ascertain, settle, and determine the full or total amount thereof, so as to be binding and conclusive on all parties; *And* after all the aforesaid principal and interest moneys, costs, and expenses, shall be wholly paid and satisfied, Then UPON TRUST to pay over the residue or surplus of the trust moneys to arise by the means aforesaid unto the said [*heir of mortgagor*], his heirs or assigns, for his and

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Declaration of trust of purchase-moneys.

Costs of the ejectment and foreclosure suit to be paid as between attorney and client, and settled by trustees.

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their own benefit (*e*). (*Covenant by heir of trustee with the trustees for sale that he has not incumbered*). AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises and of the sum of ten shillings, &c., the said [*executor*], with the privity and consent of the said [*heir of mortgagor*] and [*trustees for sale*], (testified by their severally executing these presents), *Hath* bargained, sold, assigned, and set over, *And* by these presents *Doth* bargain, &c. unto the said [*trustee of term*], his executors, administrators, and assigns, *All* and singular the several messuages or tenements, and hereditaments, hereinbefore described, and all other the premises (if any) comprised in the said term of one thousand years, created by the said indenture of the —— day of ——, and now vested in the said [*executor*], (in right of the said [*deceased mortgagee*] deceased), for the residue of the same term, as hereinbefore mentioned, with the appurtenances to the same premises belonging; *And* all the estate, right, title, interest, term, and terms of years yet to come and unexpired, property, claim, and demand whatsoever, both at law and in equity, of him the said [*executor*], in, to, and upon the same premises; TO HAVE AND TO HOLD the messuages and all other the premises hereby assigned, or intended so to be, unto the said [*trustee of term*], his executors, administrators, and assigns, henceforth for and during all the residue now to come and unexpired of the said term of one thousand years, and for all other the term, estate, and interest (if any) of the said [*executor*] therein, IN TRUST, nevertheless, for the said [*trustees for sale*], (as such trustees as aforesaid), their appointees, heirs, and assigns, and to be assigned and disposed

Further *testatum*;

Executor of deceased mortgagee, with the consent of heir of mortgagor, assigns to intended trustee of term;

And all the estate, &c.;

To hold for the residue of the term;

Variation where term is assigned by a separate deed.

(*e*) If the term had been assigned by a separate deed, the parties to such assignment, in the present case, would be the executor of the mortgagee, of the first part; the heir of the mortgagor, of the second part; the trustees for sale, of the third part; and the intended trustee of the term, of the fourth part. It would recite the mortgage, and shortly the subsequent transactions detailed in the recitals of the present deed; and then the present conveyance in trust for sale, stating the trust *for sale* fully, and the trusts directing the application of the money very briefly; and then, that it had been agreed that the residue of the term should be assigned to the trustee of the term to attend the inheritance, according to such trusts; the *testatum* would then proceed as in the present deed. (*Vide* Precedents of Deeds of Assignments of Terms, *post*, Vol. 8, p. 322 *& seq.*, 1st ed.)

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of from time to time as they shall direct; and, in the meantime, UPON TRUST to permit the residue of the same term to wait upon and attend the reversion and inheritance of the messuages and other premises hereby assigned, or intended so to be, so as to be subservient thereto, and to the said trusts declared thereof as aforesaid, and to protect the same from all mesne and intervening incumbrances, if any such there be. (*Add covenant by executor with assignee of term, that he has not incumbered; and by heir of mortgagor with executor of mortgagee, to pay principal money and interest; and also with the trustees for sale, their appointees, heirs, and assigns, that he and heir of trustee are, or one of them is, lawfully seised,—have or one of them has right to convey, —for quiet enjoyment,—free from incumbrances, except the mortgage term,—and for further assurance*); *Provided always*, and it is hereby declared, that the principal money to be ultimately recoverable under or by virtue of these presents, over and above the moneys secured by the hereinbefore recited indenture of mortgage, shall not exceed the sum of £—— (*f*). IN WITNESS &c.

In trust to attend the inheritance.

Limitation of amount to be recoverable.

(*f*) The deed, in addition to the ordinary deed stamps, should bear an *ad valorem* duty applicable to a mortgage for the amount of the present limitation, which is introduced, perhaps unnecessarily, by way of caution, in the notion that, if it could be shewn that these trusts placed the mortgagees in a better situation as to costs than they would stand in under the old mortgage, there might be ground to contend that the maximum stamp attached. *Vide ante*, Vol. 5, p. 520.

Remark as to stamp.

39. BY TENANT IN TAIL.

39. RELEASE IN FEE *by a* TENANT IN TAIL, *to be enrolled, being a* MORTGAGE *for a* TERM, *with a Limitation of the Inheritance to Uses for preventing Dower* (*a*). (VARIATION *where* MORTGAGOR *is* ONE *of several* TENANTS *in* COMMON IN TAIL *in* REMAINDER (*with* CROSS REMAINDERS), *the* TENANT *for* LIFE *joining as* PROTECTOR *for the purpose of enabling the Mortgagor to acquire the Fee Simple*).

Parties. THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., of the first part; [*mortgagee*], of &c., of the second part; and [*mortgagor's dower's trustee*], of &c., of the third

Recitals. part. WHEREAS (*recite marriage settlement, whereby the lands were limited to the intended husband for life, remainder to the wife for life, remainder to the children of the marriage, as tenants in common in tail*). AND WHEREAS the said marriage was duly solemnized between the said [*husband*] and [*wife*], at the parish church of ——, on the —— day of ——. AND WHEREAS the said [*mortgagor*] is the only child of the said marriage, and was christened at the said parish church of ——, on the —— day of ——. AND WHEREAS the said [*husband*] and [*wife*] have severally departed this life, and were severally interred in the said parish church, on the —— day of ——, and the —— day of ——. AND WHEREAS (*recite agreement for*

Testatum. *loan*). NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and also for docking, barring, and destroying all estates tail of the said [*mortgagor*] of and in the said —— and hereditaments, and all estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance of such estates tail, and for assuring and limiting the same —— and hereditaments in fee-simple, to the uses and in the manner hereinafter limited and declared of and concerning the same; and also in consideration of the sum of £—— of

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(*a*) *Vide* stat. 3 & 4 Will. 4, c. 74, stated *post*, Vol. 9, p. 416, 1st ed.

lawful money of Great Britain and Ireland, paid (*b*) by the said [*mortgagee*] to the said [*mortgagor*], at or before &c., the receipt &c.; And also in consideration &c., (*nominal consideration from releasee to mortgagor*), he the said [*mortgagor*], (*c*) *Hath* granted, bargained, sold, released, and confirmed, and by these presents *Doth* grant &c. unto the said [*dower trustee*], in his actual possession, &c., ALL THAT (*describe parcels*), and all houses, &c., and all the estate, &c.; TO HAVE AND TO HOLD the —— and hereditaments hereinbefore described, and all and singular other the premises hereby released, or intended so to be, with their appurtenances, unto the said [*dower trustee*] and his heirs for ever (*d*), TO THE USE of the said [*mortgagee*] (*e*), his executors, administrators,

39. BY TENANT IN TAIL.

Habendum,

To the use of mortgagee for a term.

(*b*) The deed should bear a mortgage-stamp according to the sum advanced. No additional stamp is requisite on account of the limitations of the reversion. See stat. 55 Geo. 3, c. 184, p. 1591, stated *ante*, Vol. 5, p. 529.

Stamp.

(*c*) If a prior tenant for life joins in the conveyance, say—
"with the consent and approbation of the said [*tenant for life*], testified by his executing these presents."

Variation where prior tenant for life joins.

(*d*) Add, if there is a prior estate for life—
"subject, nevertheless, and without prejudice to the estate for life of the said [*tenant for life*]."

(*e*) If the mortgage is in fee, say—
"TO THE USE of the said [*mortgagee*], his heirs and assigns, for ever, subject nevertheless to the proviso or agreement for redemption hereinafter contained, (that is to say)," &c.

Variation where mortgage is in fee.

As the mortgagee, in this case, takes the whole estate conferred by the assurance, no ulterior limitation of the use is requisite; and if the mortgage is by the tenant in tail alone, or by him concurrently with other persons, whose ulterior interests are not intended to be varied by the deed, the proviso for redemption should merely direct the re-conveyance to be made to such uses and in such manner as the mortgagor, his heirs or assigns, or the other persons entitled to the equity of redemption, shall appoint. Where, however, it is intended to modify the equitable ownership, this object should distinctly appear on the face of the deed: it should be made the subject of a substantive independent recital, and the proviso for redemption should be framed in conformity to it. (*Vide ante*, Vol. 5, p. 603). This is even desirable (though not necessary) where the wife of the mortgagor joins in the conveyance for the mere purpose of extinguishing her contingent right of dower. Perhaps there is scarcely any error more commonly committed in framing mortgage-deeds, than the omission distinctly to state an intention to change the equitable ownership.

No ulterior limitation where mortgage is in fee.

It is to be observed, that, where the tenant in tail in remainder is one

39. BY TENANT IN TAIL.

and assigns for the term of one thousand years, to commence and be computed from the day next before the day of the date of these presents, and fully to be complete and ended, without impeachment of or for any manner of waste; *But subject, nevertheless,* to the proviso or agreement for redemption hereinafter contained (*f*), and from and after the expiration, or other sooner determination of the said term, and in the meantime subject thereto, To THE USE of such person or persons, for such estate or estates, and charged and chargeable with such sum or sums of money, and in such manner in all respects as the said [*mortgagor*] shall, at any time or times, or from time to time, by any deed or deeds, attested by one witness or more, direct or appoint; And in default of such direction or appointment, and in the meantime until any such shall be made, and subject to any direction or appointment which shall not be a complete disposition of the said —— and hereditaments, and the fee-simple and inheritance thereof, To THE USE of the said [*mortgagor*] and his assigns, during his life; and after the determination of that estate by any means in his lifetime, To THE USE of the said [*dower trustee*], his executors or administrators, during the life of the said [*mortgagor*], *In trust* for him and his assigns; And after the determination of the several estates hereinbefore limited, To THE USE of the said [*mortgagor*], his heirs and assigns, for ever; and the said [*mortgagor*], doth hereby declare, that, if he shall die leaving a widow, she shall not be entitled to dower in or out of the —— and hereditaments hereby released or intended so to be, or any part thereof. (*Add proviso for cesser of term, on payment of principal sum and interest, ut ante,* Vol. 5, p. 544, *and covenants, by mortgagor with mortgagee, his executors or administrators, to pay principal and interest moneys; Also, covenants by the*

And subject thereto, To uses for preventing dower in favour of the mortgagor.

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of several tenants in common, among whom cross-remainders are limited, his conveyance should embrace the *entirety* of the estate, and not his original share only, in order that it may comprehend not only that share, but also the shares which may afterwards happen to devolve to him in possession under the cross-remainders.

(*f*) If the limitations had stopped here, the entail would only have been barred pro tanto, the act of 3 & 4 Will. 4, c. 74, having, it will be remembered, made a difference in this respect between mortgages in fee and mortgages for a term. *Vide ante,* Vol. 5, p. 210; also Vol. 9, p. 404, 1st ed.

mortgagor with the releasee and his heirs—That he has good right to convey; That mortgagee shall enjoy after default; Free from incumbrances; and for further assurance; Also proviso that mortgagor shall enjoy until default). IN WITNESS &c. 39. BY TENANT IN TAIL.

40. MORTGAGE *for a* TERM *by way of* CHARGE *and* APPOINTMENT *by a* TENANT *for* LIFE, *under a* POWER (*a*) *in a Settlement.* (*A short Form.*) 40. BY TENANT FOR LIFE UNDER A POWER.

THIS INDENTURE, made &c. BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. WHEREAS, by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, the release being made between (*describe parties*), (being the settlement made previously to and in consideration of a marriage then intended, and afterwards duly solemnized between the said [*mortgagor*] and [*wife*] his late wife, deceased); The manor, advowson, messuages, lands, and hereditaments hereinafter described were (with other hereditaments) conveyed and assured *to the use* (after the solemnization of the then intended marriage) of the said [*mortgagor*] and his assigns during his life, without impeachment of waste, with remainder *To the use* of the said [*trustees*] and their heirs during the life of the said [*mortgagor*], *In trust* to support the contingent uses thereinafter limited, with remainder *To the use* and intent that the said [*wife*], if she should be then living, should, out of the rents of the said hereditaments, receive, during her life, a yearly rent-charge of £1,000, with the usual powers of enforcing payment thereof: And subject thereto, *To the use* of the said [*trustees of term*], their executors, administrators, and assigns, during the term of one hundred years, upon trusts for securing the said rent-charge in the manner therein mentioned, with remainder *To the use* of the said [*other trustees of term*], their

Parties.

Recital of settlement.

(*a*) As to mortgages under powers, *vide ante*, Vol. 5, p. 137.

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executors, administrators, and assigns, during the term of five hundred years, upon such trusts as are therein declared, for raising portions for the daughters and younger sons of the said then intended marriage, with remainder *to the use* of the first and every other son of the said then intended marriage, successively, in tail male, with reversion *to the use* of the said [*mortgagor*] in fee. And it was by the said indenture of release provided and declared, that it should be lawful for the said [*mortgagor*], at any time during his life, (subject to the rent-charge provided for the said [*wife*] during her life, and the powers and remedies thereby given for payment thereof as aforesaid), to charge all or any part or parts of the several manors, hereditaments, and premises intended to be thereby granted and released, with the raising and levying of any sum or sums of money, not exceeding in the whole the sum of £4,000, to be paid to such person or persons, and for such intents and purposes, as the said [*mortgagor*], by any deed or instrument in writing, to be sealed and delivered by him in the presence of and attested by two or more credible witnesses, should direct or appoint; and to limit and create any term or terms of years for securing the payment of the sum or sums so to be charged, with interest thereon. AND WHEREAS the said [*wife*] departed this life on the —— day of ——, and the said [*mortgagor*] hath issue by her three sons only. AND WHEREAS the said [*mortgagor*], being desirous of raising the sum of £4,000 by virtue of his above-recited power, hath requested the said [*mortgagee*] to advance the same to him by way of mortgage, upon the security of the hereditaments hereinafter described, which the said [*mortgagee*] hath consented to do. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £4,000 of lawful British money, paid by the said [*mortgagee*] to the said [*mortgagor*] at or before the execution of these presents, the receipt whereof the said [*mortgagor*] doth hereby acknowledge, and therefrom doth discharge the said [*mortgagee*], his heirs, executors, and administrators, He the said [*mortgagor*], in pursuance of the power or authority so reserved to him by the said indenture of release or settlement as aforesaid, and of every other power and authority enabling him in this behalf, *hath* charged, and by this deed or instrument in writing, by him sealed and delivered in the presence of and attested by two credible witnesses, *doth* charge the manor, advowson, messuages, lands, and hereditaments hereinafter

Power to mortgage.

Recital of death of jointress.

Contract for the loan.

Testatum.

In consideration of mortgage-money, mortgagor, in pursuance of his power, charges the settled lands.

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described, and their and every of their appurtenances, with the payment of the sum of £4,000 of lawful British money, unto the said [*mortgagee*], his executors, administrators, or assigns, with interest for the same at the rate of £5 per centum per annum, at the time and in the manner hereinafter mentioned. AND THIS INDENTURE FURTHER WITNESSETH, that, for the consideration aforesaid, and for the more effectually securing the repayment of the said principal sum of £4,000, and the interest thereon, He the said [*mortgagor*], in pursuance of the hereinbefore recited power or authority reserved to him by the said indenture of release or settlement, and of every other power and authority enabling him in this behalf, *Doth* by this deed or instrument in writing, by him sealed and delivered in the presence of and attested by two credible witnesses as aforesaid, direct, limit, and appoint, that ALL THAT, (*describe manor, advowson, &c.*), and all and singular houses, &c., and the reversion, &c., with their and every of their appurtenances, shall remain, continue, and be TO THE USE of the said [*mortgagee*], his executors, administrators, and assigns, from the day next before the day of the date hereof, for and during the full end and term of three hundred years thence next ensuing and fully to be complete and ended, without impeachment of or for any manner of waste; *subject nevertheless* to the hereinafter contained proviso or condition for making void the said term (that is to say), PROVIDED ALWAYS, and these presents are upon this express condition, That, in case the said [*mortgagor*], his heirs, executors, or administrators, or the person or persons entitled for the time being to redeem the manor, advowson, messuages, lands, and hereditaments expressed to be hereby appointed, do and shall, on the —— day of ——, at &c., pay unto the said [*mortgagee*], his executors, administrators, or assigns, [*the principal and interest*], free from taxes, and without any other deduction whatsoever; Then, and in such case, and immediately after such payment shall be so made as aforesaid, these presents, and the term of three hundred years hereby created, shall cease, determine, and be absolutely void (*b*); AND the said [*mortgagor*], for himself, his heirs,

Further *testatum.* Appointment,

To the use of mortgagee for three hundred years.

Proviso for redemption.

Covenant to pay;

(*b*) In preparing a mortgage under a power, of course, particular attention will be paid to see that the mortgage is in conformity to the power; one of the requisitions of which frequently is, that the term to

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executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors, administrators, and assigns, in manner following, that is to say, That he the said [*mortgagor*], his heirs, executors, or administrators, [or the person or persons entitled for the time being to redeem the said premises (*c*)], will pay unto the said [*mortgagee*], his executors, or administrators, at ——, &c. (*following the terms of the proviso for redemption*), according to the purport of the aforesaid proviso, and the true intent and meaning of these presents; *And also*, that it shall be lawful for the said [*mortgagee*], his executors, administrators, and assigns, from time to time and at all times, after default shall be made in payment of the said sum of £4,000, or any part thereof, or the interest thereon, contrary to the aforesaid proviso and covenant for payment of the same, peaceably and quietly to enter into and upon, and to hold and enjoy, the aforesaid manor, advowson, messuages, lands, and hereditaments, and to receive the rents and profits thereof, for all the residue which shall be then unexpired of the said term of three hundred years therein, without eviction or interruption of, from, or by the said [*mortgagor*], or any other person or persons whomsoever; *And that* free and clear of and from all charges and incumbrances whatsoever; *And moreover* that he the said [*mortgagor*], his heirs, executors, and administrators, and every other person having any estate, right, or interest in, to, or out of the said manor, advowson, messuages, lands, and hereditaments, or any part thereof, shall and will, at all times, upon every reasonable request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs of the said [*mortgagor*], his heirs, executors, or administrators, or the person or persons for the time being entitled to redeem the said premises (if any), until the equity of redemption therein shall have been foreclosed or otherwise barred, and afterwards at the costs of the said [*mortgagee*], his executors, administrators, or assigns, make and execute all such further acts, deeds, conveyances, and assurances in the law whatsoever, for the more effectually granting and assuring the said manor, advowson, mes-

for quiet enjoyment after default,

free from incumbrances; and for further assurance.

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be created shall be subject to a proviso for cesser on payment of the mortgage-money.

(*c*) These words may be properly omitted, as they clearly create no personal obligation on the persons here described.

suages, lands, and hereditaments unto the said [*mortgagee*], his executors, administrators, and assigns, during all the residue which shall be then unexpired of the said term of three hundred years therein, in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised and required. And *it is hereby agreed and declared*, that until default shall be made in payment of the said sum of £4,000, or some part thereof, or the interest thereon, contrary to the aforesaid proviso and covenant for payment of the same, it shall be lawful for the said [*mortgagor*], or other the person or persons for the time being entitled to redeem the said manor, advowson, messuages, lands, and hereditaments, under or by virtue of these presents, peaceably and quietly to hold and enjoy the said hereditaments, and to receive the rents and profits thereof, for his or their own use, without interruption by the said [*mortgagee*], his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him or them. (*Declaration that, as between the real and personal representatives of the mortgagor, the mortgaged lands shall be primarily liable, ut post*, p. 204). In witness &c.

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Until default, mortgagor to enjoy.

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41. APPOINTMENT *and* RELEASE *in* FEE *by way of* MORTGAGE, *by* HUSBAND *and* WIFE, *under a Power of* REVOCATION *and* NEW APPOINTMENT *in their Marriage Settlement, where Leases had been previously granted under a Power in the Settlement; Reservation of Power of Leasing to the Mortgagors.*

41. UNDER A POWER OF REVOCATION AND NEW APPOINTMENT.

THIS INDENTURE, made &c., BETWEEN [*mortgagors, husband and wife*], of &c., of the one part; and [*mortgagees*], of &c., of the other part. WHEREAS (*recite settlement, whereby the lands were limited to the husband and wife, during their lives, with power of leasing, with remainders over, and ultimately to the husband in fee.*) And in

Parties.

Recital of power

41. UNDER A POWER OF REVOCATION AND NEW APPOINTMENT.

of revocation, and new appointment, in settlement.

the indenture now in recital was contained a proviso (*a*), that, in case the said [*mortgagors*], at any time or times thereafter, should think it convenient or necessary to alter, change, revoke, or make void, all or any of the estates, uses, trusts, limitations, powers, or provisoes therein contained, limited, or declared, Then, and in such case, it should be lawful for the said [*mortgagors*], from time to time, by their joint deed or deeds in writing, to be by them duly executed in the presence of two or more credible witnesses, to alter, revoke, annul, or make void all and every or any of the uses, estates, trusts, limitations, powers, and provisoes therein expressed and contained, of and concerning all or any part of the said —— and hereditaments, and by the same or any other deed or deeds, executed by them as aforesaid, to declare, limit, or appoint, from time to time, such new uses, estates, and trusts, of and concerning the same premises, whereof the said uses should be so altered or made void, and to limit the same to such person or persons, and for such estate and estates, and subject to such provisoes, powers, limitations, and agreements, as to them the said [*mortgagors*] should seem meet.

Of agreement for loan.

AND WHEREAS the said [*mortgagors*] have contracted with the said [*mortgagees*] for the loan of the sum of £——, at interest, and have agreed to secure the same sum by a mortgage of the said hereditaments.

Testatum:

Mortgagors, in exercise of their power, to revoke the uses of settlement.

NOW THIS INDENTURE WITNESSETH, that, in order to enable them the said [*mortgagors*] to make such mortgage as aforesaid, They the said [*mortgagors*], in pursuance and in exercise of the power and authority contained in the hereinbefore recited indenture, and of all other powers and authorities enabling them in that behalf, *Do* and each of them *Doth*, by this their joint deed in writing by them duly executed in the presence of the two credible persons whose names are intended to be hereupon indorsed as witnesses, absolutely revoke, annul, and make void, All and every the uses, estates, trusts, limitations, powers, and provisoes, in the same indenture expressed and contained, of and concerning the

(*a*) Sometimes, in reciting a power, particularly where it is inartificially framed, it is proper to set forth the clause *in totidem verbis, i. e.* with a *videlicet:* in such a case, it is inaccurate to change the tense of the verb "shall" to "should," &c., which is often done.

—— and hereditaments hereby appointed and released, or intended so to be, and every or any of them, and every or any part and parcel thereof, but without prejudice to such lease or leases as hath or have been made by the said [*mortgagors*], under and by virtue of the power or powers for that purpose contained in the said indenture. AND THIS INDENTURE FURTHER WITNESSETH, that, for and in consideration of £—— of &c., paid by the said [*mortgagees*] to the said [*mortgagors*], at or before the sealing and delivery of these presents, the receipt whereof the said [*mortgagors*] do hereby acknowledge, and therefrom, and from every part thereof, do acquit, release, and discharge the said [*mortgagees*], their heirs, executors, and administrators; They the said [*mortgagors*], in pursuance and exercise of the power and authority contained in the hereinbefore recited indenture, and of all other powers and authorities enabling them in this behalf, *Do*, by this present deed, by them duly executed in the manner aforesaid, and each of them *Doth*, direct, limit, and appoint, That all and every the —— and hereditaments hereinafter described, and hereby released or intended so to be, shall from henceforth be and remain To THE USE of the said [*mortgagees*], their heirs and assigns for ever; *Subject, nevertheless,* to the proviso or agreement for redemption hereinafter contained. [AND THIS INDENTURE MOREOVER WITNESSETH (*b*), that, for the consideration aforesaid, and by way of further or auxiliary assurance, They the said [*mortgagors*], *Have*, and each of them *Hath*, granted, bargained, sold, released, and confirmed, and by these presents *Do*, and each of them *Doth*, &c. unto the said [*mortgagees*], (in their actual possession, &c.), (*describe parcels with general words*), To HAVE AND TO HOLD the —— and premises hereby granted and released, or intended so to be, with their appurtenances, unto the said [*mortgagees*] and their heirs: *To the only use* of them the said [*mortgagees*], their heirs

41. UNDER A POWER OF REVOCATION AND NEW APPOINTMENT.

Further *testatum*,

In consideration of mortgage-money, mortgagors in exercise of their power appoint the manor, &c. after described,

To the use of mortgagees in fee.

Further *testatum*:

Mortgagors release to mortgagees in fee.

(*b*) This *testatum* clause may be properly omitted, provided caution be used to ascertain that the deed of appointment conforms, in point of execution, to the requisition of the power. If the release is dispensed with, the parcels must be described in the appointment, and the reference to the release expunged throughout the draft. The release by the wife, as a *feme coverte*, is, of course, inoperative, and the only event in which it could possibly take effect would be (supposing the estate to have proceeded from her) that of the marriage being void.

As to the release *testamentum* clause.

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and assigns for ever.] PROVIDED ALWAYS nevertheless, and it is hereby declared and agreed by and between the said parties to these presents, That, if the said [*mortgagors*], or either of them, or the heirs, executors, or administrators of them, or either of them, or the person or persons for the time being entitled to the equity of redemption of the said premises, do and shall pay, or cause to be paid, to the said [*mortgagees*], or the survivor of them, his executors or administrators, or their or his assigns, at or in the common dining-hall of the Middle Temple in London, the full sum of £—— of lawful British money and interest in manner following, (that is to say), the sum of £——, being one half-year's interest on the said sum of £——, after the rate of 4*l.* 10*s.* for every £100 by the year, on the —— day of —— now next ensuing, and the further sum of £——, being the whole principal money and another half-year's interest thereon, after the rate aforesaid, on the —— day of —— then next following, which will be in the year of our Lord ——, without any deduction, defalcation, or abatement out of the same, for or in respect of any taxes, or any other matter, cause, or thing whatsoever, Then, from and immediately after such payment so made as aforesaid, they the said [*mortgagees*], or the survivor of them, his heirs or assigns, shall and will, at the reasonable request and proper costs and charges of the said [*mortgagors*], or either of them, or the heirs, executors, or administrators of them or either of them, convey and assure the —— and premises mentioned to be hereby appointed and released, with their appurtenances, to and for such uses, intents, and purposes, upon such trusts, and under and subject to such powers, provisoes, conditions, restrictions, and limitations, as the same stood settled and limited to immediately before the execution of these presents, or such of them as shall be then subsisting or capable of taking effect (*c*), discharged from all incumbrances whatsoever, committed or suffered by them the said [*mortgagees*], their heirs, executors, administrators, or assigns; AND the said [*husband-mortgagor*], for himself, his heirs, executors, and administrators, doth covenant and agree with the said [*mortgagees*], their executors

Special proviso for redemption.

Lands to be reconveyed to the uses subsisting before the mortgage.

Covenant by husband-mortgagor for payment of money.

(*c*) Where, antecedently to the execution of the mortgage, the estate is subject to a variety of limitations which are not intended to be disturbed, this seems to be the most correct mode of framing the proviso for re-conveyance.

41. UNDER A POWER OF REVOCATION AND NEW APPOINTMENT.

and administrators (*d*), by these presents, that they the [*husband-mortgagor*] and [*wife*], his wife, or one of them, or the heirs, executors, or administrators of them or one of them, shall and will pay or cause to be paid unto the said [*mortgagees*], or the survivor of them, his executors or administrators, or their or his assigns, the said sum of £—— and interest, at the times and in the manner following, (that is to say), (*follow the terms of the proviso for redemption*), according to the true intent and meaning of the proviso for that purpose hereinbefore contained; AND the said [*husband-mortgagor*] for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*mortgagees*], their heirs and assigns, in the manner following, (that is to say), That they the said [*husband-mortgagor*] and [*wife*], his wife, (*have power to appoint and release; for quiet enjoyment after default, free from incumbrances, except leases granted under the power, and for further assurance; Proviso for quiet enjoyment until default of payment of principal sum or interest*), by the said [*husband-mortgagor*] and [*wife*], his wife, or the survivor of them, or the person or persons who for the time being shall be entitled to redeem the said premises; *And also*, that, from time to time and in the meantime, until entry shall be made, or declaration in ejectment shall be delivered, by the said [*mortgagees*], or the survivor of them, his heirs or assigns, to recover the possession of the —— and premises mentioned to be hereby appointed and released as aforesaid, or some part thereof, it shall be lawful for the said [*mortgagors*], or the survivor of them, to make and grant such tenants' lease or leases of the said —— and premises, or any of them, or any part or parcel thereof, or of any mine or mines of lead ore, copper ore, cauk, calamine, coal, or other mines or minerals lying and being in or upon, or under, the said lands and premises, or any of them, or any part or parts thereof, as they or the

Covenant by husband-mortgagor for title, &c.

Proviso that mortgagors may grant leases under their power, until entry, &c.

(*d*) Where the only covenant which follows is for the payment of the mortgage-debt, such covenant, not being assignable at law, (*Canham* v. *Rust*, 2 J. B. Moore, 164), should not be made with the *assigns* of the covenantee; but where the covenant to pay is combined with other covenants, which or some of which run with the land, they may properly be made with the heirs, executors, administrators, and assigns of the covenantee, because the word "assigns" would be construed as applicable to those covenants exclusively, *referendo singula singulis*.

Covenant to pay should not be with *assigns*.

41. UNDER A POWER OF REVOCATION AND NEW APPOINTMENT.

survivor of them, by virtue of the above-recited indenture of the —— day of ——, were or was enabled and empowered to make, and as they or the survivor of them might or could have made or granted, in case these presents had not been made; upon the terms, nevertheless, and under and subject to the several conditions and restrictions in the last-mentioned indenture expressed concerning such lease and leases: Provided, nevertheless, that all and every the rent and rents to be reserved upon and made payable by such lease and leases respectively, be incident to, and go along with, the reversion and inheritance immediately expectant on the term or terms to be granted by such lease or leases, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding (*e*). IN WITNESS &c.

(*e*) See some observations as to giving mortgagors a power of leasing, *ante*, Vol. 5, pp. 357, 566.

Where the mortgagor under a power intends (as he commonly would) that the estate shall be the primary fund for the payment of the debt, it seems proper to add the following clause:—

Declaration that personal estate of mortgagor shall not be applicable in exoneration of lands.

"PROVIDED ALWAYS, *and it is hereby declared*, that, as between the respective real and personal representatives of the said [*mortgagors*], the said —— and hereditaments hereby appointed, or intended so to be, shall be and be deemed to be the primary and exclusive fund for the payment of the sum of £—— and interest hereby secured thereon; and the respective personal estates of the said [*mortgagors*] shall not be applicable to the payment thereof, in exoneration of the said —— and hereditaments; but it is further declared, that nothing in this present declaration contained shall prejudice or affect any of the rights and remedies of the said [*mortgagees*], their heirs, executors, or administrators, by virtue of these presents."

[As to the right of the owner of a mortgaged estate to exoneration out of the personal property of the mortgagor, *vide ante*, Vol. 5, p. 363 *et seq.*]

42. ASSIGNMENT *of a Fee-farm Rent to a Trustee (a) for Mortgagees, who advance Money to* TRUSTEES *of a* TERM *of Five Hundred Years, created by the Will of the last Owner, for the purpose of* RAISING MONEY *to pay* DEBTS *and* LEGACIES. *The Devisee in fee under the Will (and who was also the Heir-at-law) joins, and covenants for the Payment of the Money, &c. (Some rather Special Clauses).*

42. BY TRUSTEES OF A TERM.

THIS INDENTURE, of six parts, made the —— day of ——, BETWEEN [*trustees of the term*], of &c., (trustees of a term of 500 years, created of and in (among other hereditaments) the annual sum, fee-farm rent, or yearly rent-charge of £300, hereinafter particularly described, and intended to be hereby assigned, in and by the codicil to the last will and testament of [*testator*], late of &c., esquire, deceased, hereinafter recited, and also executors of the same will (*b*)), of the first part; [*heir-at-law*], of &c., esquire, (eldest son and heir-at-law of the said [*testator*], the testator), of the second part; [*husband of daughter*], of &c., esquire, and [*married daughter*], his wife, (late ——, spinster, one of the daughters and younger children of the said [*testator*], deceased, for whom portions were provided under the aforesaid term of 500 years), of the third part; the said [*surviving trustee*], (the surviving trustee named in the indenture of the —— day of ——, hereinafter recited), of the fourth part; the said [*mortgagees*], of &c., of the fifth part; and [*trustees for mortgagees*], of &c., (a trustee nominated by the said [*mortgagees*]

Parties.

(*a*) The mortgage was made to a trustee, and not to the mortgagees directly, because one of the persons advancing the money was also one of the trustees of the term, or, in other words, was both mortgagor and mortgagee. There was no mode, therefore, of vesting the term in him jointly with his co-mortgagee, but that of assigning it to a trustee upon trust to assign to them. The form of the assignment by the trustee (which was indorsed upon the present deed) will be found in the next precedent.

Reasons for assigning to a trustee for mortgagees.

(*b*) The additional description of the parties, referring to the character in which they join in the deed, was requisite, on account of some of them being parties in several characters.

42. BY TRUSTEES OF A TERM.

for the purpose hereinafter mentioned), of the sixth part. WHEREAS the said [*testator*], deceased, by his last will and testament, in writing, by him duly executed and attested as by law was then required for devising freehold estates, bearing date on or about the —— day of ——, 1832, gave and bequeathed unto his younger son W., (now deceased), and his two daughters, [*married daughter, by antenuptial name*], now [*nuptial name*], and [*unmarried daughter*], the sum of £7,000, equally to be divided between them, share and share alike, and their respective shares to be paid to them respectively at their respective ages of twenty-one years, with such allowance for the maintenance and education of the said children during their respective minorities as is thereinafter mentioned. And the said testator also gave and bequeathed unto his wife [*wife*], (who died in his lifetime), and to the said [*trustees of term*], their executors and administrators, All his personal estate and effects of what nature or kind soever not thereby or otherwise disposed of, *Upon trust*, in the first place, to pay his funeral expenses and debts, and afterwards the legacies or sums of money thereinbefore given or bequeathed, and the interest and maintenance to grow due and payable in respect thereof; and, after payment thereof, and subject thereto, *In trust*, as to the residue or surplus thereof, for the benefit of his eldest son, the said [*heir-at-law*], (party hereto): And the said testator, by his said will, gave and devised his manor of ——, and all other his real estate whatsoever, which he was then seised of or entitled to, or had any right or power to dispose of, in possession, reversion, remainder, or expectancy, unto and to the use of his said wife [*wife*], (deceased), and the said [*trustees of the term*], their executors, administrators, and assigns, for the term of five hundred years, to commence from the said testator's death, and fully to be complete and ended, without impeachment of or for any manner of waste, upon the trusts thereinafter declared; And from and after the expiration or other sooner determination of the said term, and subject to the same, unto and to the use of his said son [*heir-at-law*], (party hereto), his heirs and assigns, for ever; And the said testator thereby declared, that the term of five hundred years thereinbefore limited to the said [*wife*] and [*trustees of the term*], their executors, administrators, and assigns, was so limited, *Upon trust*, by sale or mortgage of the said real estate, or of such part thereof as the said trustees in their

Reciting will of last owner, whereby he gave to his son and daughters 7,000*l.*,

and to trustees all his personal estate, in trust to pay his debts and legacies;

and, as to the residue, in trust for his eldest son;

and his real estate to same trustees, for 500 years.

And, subject thereto, to his eldest son, in fee.

Declaration of trusts of term.

discretion should think proper, for all or any part of the said term, or by and out of the rents, issues, and profits thereof, in the meantime, until such sale or mortgage should be made, or by such other ways and means as the said trustees should think proper, to raise such sum or sums of money as should be sufficient fully to pay and satisfy so much and such part of his said debts, legacies, funeral and testamentary charges and expenses, and the maintenance and education of his children during their minorities, as his personal estate should fall short to answer, and should dispose of the money to be raised in payment and satisfaction thereof accordingly; To the intent that the said term might come in aid of his personal estate (*c*), for the more speedy raising and paying of his said debts, legacies, and funeral and testamentary charges and expenses accordingly; And the said testator appointed his said wife and the said [*trustees of the term*] executrix and executors of his said will, and guardians of his children during their respective minorities. And whereas the said [*testator*], deceased, by a codicil to his said will by him duly executed and attested as aforesaid, bearing date on or about the —— day of ——, after reciting his said will, so far as relates to the bequest of the aforesaid legacy of £7,000 to his younger children, and to the times and mode of payment thereof; And also reciting, that, since the making of his said will, he had become entitled to divers lands, tenements, and hereditaments, (in which said hereditaments was included the fee-farm rent hereby granted or otherwise assured), and was desirous of making a further provision for his said children—gave and bequeathed unto such of his said children as should attain the age of twenty-one years, and become entitled under his said will to the said sum of £7,000, or any part thereof, the sum of £1,000 each, as an addition to their respective portions and shares of the said £7,000; and did thereby charge the same on all his real and personal estate, and did direct the same to be raised and paid to them respectively in such manner and at such times as their respective shares of the said £7,000 are, by his said will, directed to be raised

42. BY TRUSTEES OF A TERM.

Recital of codicil.

(*c*) This explicit declaration avoids (as every well-drawn will does) the perplexing question, whether a charge of lands is intended to come in aid of the personal estate, or to render them *primarily* applicable. See the cases on this subject collected, 2 Jarm. Dev. 681.

42. BY TRUSTEES OF A TERM.

and made payable: And for the better and more effectually raising thereof, the said testator gave and devised all his real estate whatsoever, not comprised in his said will, unto and to the use of the said [*trustees of the term*], the surviving trustees named in his said will, their executors, administrators, and assigns, for a term of five hundred years, to commence from his death, without impeachment of waste, *Upon trust*, by sale or mortgage thereof, or of any part thereof, in manner as in the said will is mentioned, to raise and levy all such part or parts of the sum of £7,000 thereby given to his said younger children, and of the additional legacies of £1,000 each by his said codicil given to them, as his personal estate should fall short to pay and discharge; And the said testator thereby confirmed his said will.

Death of testator, &c.

AND WHEREAS the said [*testator*], the testator, departed this life in or about the month of ——, without revoking or altering his said will and codicil, otherwise than so far as the said will is altered by the said codicil, leaving the said [*heir-at-law*], (party hereto), his eldest son and heir-at-law, and also the said [*younger son*], (who had then attained the age of twenty-one years), and the said [*married daughter, by antenuptial name*], (now [*nuptial name*]), and [*other daughter*], both then infants, his daughters, him surviving;

Proof of will.

AND WHEREAS the said [*trustees of term*], soon after the said testator's death, duly proved his said will and codicil in the Prerogative Court of the Archbishop of Canterbury, and took upon themselves the execution thereof.

Death of younger son.

AND WHEREAS the said [*younger son*] departed this life on or about the —— day of —— now last past, intestate, and without issue, and administration of his goods, chattels, and credits has been granted to the said [*heir-at-law*], (party hereto), by the said Prerogative Court.

That testator's daughter and her husband had applied to trustees for payment of her legacy.

AND WHEREAS the said [*married daughter*], the wife of the said [*husband*], attained the age of twenty-one years on the —— day of —— last past; And the said [*husband*], and [*married daughter*], his wife, have applied to the said [*trustees of term*] for the payment of the sum of 2,333*l.* 6*s.* 8*d.*, being the said [*married daughter's*] third share of the legacy of £7,000 given by her said father's will, and the whole of her legacy of £1,000 given by the codicil thereto, to which she became entitled on her attaining the age of twenty-one years.

Recital of articles for a settlement on daughter's marriage.

AND WHEREAS, by indenture tripartite, bearing date the —— day of ——, and made between the said [*husband*], of the first part; the said [*married daughter*], his wife, by her name

42. BY TRUSTEES OF A TERM.

of [*antenuptial name*], an infant of the age of twenty years and upwards, one of the three younger children of the said [*testator*], of the second part; and the said [*trustees of settlement*], of the third part, (being the settlement made previously to, and in contemplation of, the marriage of the said [*husband*] and [*married daughter*], his wife); the said [*husband*] covenanted with the said [*trustees*], within two days after the solemnization of the then intended marriage, to assign (*d*) the sum of 3,333*l.* 6*s.* 8*d.*, the third part to which the said [*married daughter*] would become entitled, on her attaining the age of twenty-one years, of and in the legacy or sum of £7,000 in and by the above-recited will of the said [*testator*], deceased, given and bequeathed to his younger children as therein and hereinbefore mentioned, and also the said legacy or sum of £1,000, to which the said [*married daughter*], then [*antenuptial name*], would also become entitled, on her attaining the age of twenty-one years, under and by virtue of the said codicil to the will of the said [*testator*], deceased, unto the said [*trustees of settlement*], their executors, administrators, and assigns; *Upon the several trusts*, and for the several intents and purposes, for the benefit of the said [*husband*] and [*married daughter*], his wife, and their issue, in the indenture now in recital declared concerning the same: AND WHEREAS, by a deed-poll or instrument in writing under the hands and seals of the said [*husband*] and of the said [*trustees of settlement*], indorsed on the lastly-in-part-recited indenture, and bearing date the —— day of —— last, reciting that a marriage had been solemnized between the said [*husband*] and [*married daughter*], the said [*husband*] Did assign and transfer unto the said [*trustees of settlement*], their executors, administrators, and assigns, all and singular the several legacies or shares of legacies mentioned and comprised in the lastly-hereinbefore-recited indenture; Upon the several trusts, and for the several intents and purposes in the same indenture declared concerning the same. AND WHEREAS the sum of 3,333*l.* 6*s.* 8*d.*, to which the said [*younger son*], deceased, became entitled, at the age of twenty-one years as his share of the aforesaid sum of £7,000 given by the said will of the

Recital of assignment by the husband after the marriage in pursuance of articles.

Recital of payment of younger son's legacy.

(*d*) As to the effect of a settlement upon the intended wife's *choses en action*, where she is a minor, and the intended husband adult, *vide post*, Vol. 9, p. 38, 1st ed.

42. BY TRUSTEES OF A TERM.

said [*testator*], deceased, and in respect of his the said [*younger son's*] legacy of £1,000, given by the codicil to the said will of the said [*testator*], and all interest in respect of the said sum of 3,333*l.* 6*s.* 8*d.* were paid unto him the said [*younger son*], in his lifetime, as the said [*administrator*], (party hereto), his administrator, doth hereby acknowledge.

That all testator's debts had been paid, and all his legacies, except those given to the daughters.

AND WHEREAS all the debts and funeral and testamentary charges and expenses of the said [*testator*], deceased, have been paid and satisfied, and all his legacies given by his said will and codicil have also been paid and satisfied, except the several sums of 3,333*l.* 6*s.* 8*d.*, and 3,333*l.* 6*s.* 8*d.*, being the amount of the several legacies by his said will and codicil given to his said daughters [*married daughter*] and [*unmarried daughter*].

That the personal estate was exhausted.

AND WHEREAS all the personal estate of the said [*testator*], deceased, hath been exhausted in paying and satisfying his said debts, and the said charges and expenses, and his said legacies, except as aforesaid, and it is become necessary to raise the sum of 3,333*l.* 6*s.* 8*d.* to which the said [*married daughter*] became entitled at the age of twenty-one years under her said father's will and codicil, by mortgage of part of the real estates by the same will and codicil subjected thereto.

That a sum was owing to the eldest son as the administrator of his brother.

AND WHEREAS there is now due and owing to the said [*administrator*], (party hereto), as administrator of the said [*younger son*] (deceased), the sum of £1,000 and upwards, being what remains unpaid of the sum of 1,666*l.* 13*s.* 4*d.*, the portion of him the said [*younger son*], as younger son under his father's and mother's marriage settlement, and which was secured upon the manor of —— and other hereditaments in the said county of ——.

That mortgagees had agreed to lend testator's heir-at-law 3,789*l.* 7*s.* 9*d.* to be applied in payment of the married daughter's legacy, and the residue to pay a sum due to the heir-at-law as the administrator of his deceased brother.

AND WHEREAS, the said [*mortgagees*] being possessed of the sum of 3,789*l.* 7*s.* 9*d.*, which they are desirous of lending upon a real security, at interest, he the said [*heir-at-law*], (party hereto), hath applied to and requested them to lend and advance the same, as well for the purpose of applying the sum of 3,333*l.* 6*s.* 8*d.*, part thereof, in satisfaction and discharge of the said sum of 3,333*l.* 6*s.* 8*d.* so due to the said [*married daughter*] at her age of twenty-one years as aforesaid, and also for applying the sum of 456*l.* 1*s.* 1*d.*, residue thereof, in part discharge of the said sum of £1,000 and upwards so due to him the said [*administrator*], (party hereto), as administrator as aforesaid, which they the said [*mortgagees*] have agreed to do upon having the repayment of the said sum of 3,789*l.* 7*s.* 9*d.*, with interest, secured to

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them by a mortgage of the fee-farm annual rent or sum of £300, hereinafter particularly described, (being part of the premises comprised in the aforesaid term of five hundred years, created by the codicil of the said [*testator*], deceased), in manner hereinafter expressed; And, inasmuch as they the said [*trustees of term*] are well satisfied that the premises comprised in the several terms of five hundred years, and five hundred years, created by the said will and codicil of the said [*testator*], deceased, exclusively of the said fee-farm rent hereby intended to be mortgaged, are an abundantly ample security for the said legacy of 3,333*l.* 6*s.* 8*d.*, given by the said will and codicil to the said [*unmarried daughter*], they the said [*trustees of term*] have agreed that the term of five hundred years created by the said codicil in the said fee-farm rent, shall be made a security, as well for the said sum of 456*l.* 1*s.* 1*d.*, as for the said sum of 3,333*l.* 6*s.* 8*d.*, so intended to pay off the legacy of the said [*married daughter*] as aforesaid. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of 3,333*l.* 6*s.* 8*d.* of lawful British money by the said [*mortgagees*] to the said [*trustees of settlement*], as trustees of the above-recited indenture of the —— day of ——, in hand, at or before the sealing and delivery of these presents, paid by the said [*mortgagees*], with the consent and by the direction of the said [*husband*] and [*married daughter*], his wife, (testified by their severally executing these presents), in full satisfaction and discharge of all sums of money which the said [*married daughter*], or any other person in her right, became entitled unto under and by virtue of her said father's will and codicil, on her attaining the age of twenty-one years, the receipt and payment of which said sum of 3,333*l.* 6*s.* 8*d.*, they the said [*trustees of settlement*], and also the said [*husband*] and [*married daughter*], do hereby respectively acknowledge, and from the same do acquit, release, and discharge the said [*mortgagees*], their heirs, executors, administrators, and assigns; *And also* in consideration of the further sum of 456*l.* 1*s.* 1*d.* of like lawful money paid by the said [*mortgagees*], to the said [*heir-at-law*] (party hereto), as administrator of the said [*younger son*], deceased, at the same time, in part satisfaction of the sum of £1,000 and upwards so due and owing to him the said [*administrator*], as such administrator as aforesaid, the receipt of which said sum of 456*l.* 1*s.* 1*d.* he the said [*administrator*] (party hereto) doth hereby also acknowledge, and

That trustees of the term, being satisfied that the unpaid legacy was sufficiently secured upon the residue of the property, had agreed to assign, &c.

Testatum.

In consideration of a sum paid by mortgagees to trustees of the married daughter's settlement by the direction, &c.

And of a further sum paid to the eldest son as the administrator of his brother, the deceased legatee,

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of and from the same doth acquit, release, and discharge the said [*mortgagees*], their heirs, executors, administrators, and assigns, by these presents; *And also,* in consideration

and for nominal consideration,

of the sum of 10*s.* of like lawful money to the said [*trustees of term*] in hand at the same time paid by the said [*trustee for mortgagees*], the receipt whereof is hereby acknowledged: They the said [*trustees of term*] (at the request and by the direction, as well of the said [*heir-at-law*] (party hereto), as of the said [*husband*] and [*married daughter*], his wife, and [*trustees of settlement*], (testified as aforesaid)) *Have* and each of them *hath* bargained, sold, assigned, and transferred, and by these presents *do,* and each of them *doth,* &c. (*e*), and the said [*heir-at-law*] (party hereto) *hath* granted, bargained, sold, ratified, and confirmed, and by these presents *doth* grant, bargain, &c., unto the said [*trustee for mortgagees*], his executors, administrators, and assigns, ALL THAT annual sum, fee-farm rent, or yearly rent-charge of £300, created by certain indentures of lease and release, bearing date respectively on or about the —— or —— days of ——, and made between [*grantor*], of &c., of the one part, and [*grantees*], of &c., of the other part, and issuing and payable out of all and singular the plots, pieces, or parcels of ground, and hereditaments, situate in the parish of ——, in the county of ——, described in the said indentures of lease and release, and particularized in the schedule to these presents hereunder written (*f*); Together with such powers of distress and entry in case of non-payment of the said annual sum, fee-farm rent, or yearly rent-charge, as in and by the said indenture of release are provided or intended for the recovery of the same; *And* all the estate, &c.; And also all deeds, &c. TO HAVE AND TO HOLD, perceive, receive, and take the annual sum, fee-farm rent, or yearly rent-charge of £300 and premises hereinbefore expressed to be hereby assigned, with the appurtenances, unto the said [*trustee for*

trustees of term by the direction &c,, assign to trustee for mortgagees,

fee-farm rent.

Habendum for residue of term created by testator's will.

(*e*) The difference between the two former precedents and this will be easily observed: *there* the mortgagors had a power to limit an estate as well as to raise the money, and therefore the instrument assumed the form of an appointment; *here* the estate is already in the mortgagors for the purposes of the charge, and therefore the mortgage is simply an assignment of that estate.

(*f*) The plan of describing lands by schedule is now much adopted, and is found very convenient where the parcels are long.

mortgagees], his executors, administrators, and assigns, from henceforth for and during all the residue and remainder now unexpired of the term of five hundred years therein created by the above-in-part-recited codicil of the said [*testator*], deceased, and for all other the estate, term, and interest of the said [*trustees of term*] therein, *Upon the trust* and for the intent and purpose hereinbefore expressed concerning the same: *But subject, nevertheless,* to the proviso for redemption hereinafter contained, that is to say, (*Proviso and declaration, that, if the said heir-at-law, party hereto, his heirs, executors, administrators, or assigns, or the said trustees of term, their executors, administrators, or assigns, should pay unto the mortgagees, their executors, administrators, or assigns, the principal sum and interest*), Then, and in such case, and from and immediately after such payment shall be so made as aforesaid, he the said [*trustee for mortgagees*], his executors, administrators, or assigns, shall and will, at the request, costs, and charges of the said [*heir-at-law*], (party hereto), his heirs, executors, administrators, or assigns, assign the same annual sum, fee-farm rent, or yearly rent-charge, and premises hereinbefore expressed to be hereby assigned, unto the said [*trustees of the term*] (*g*), their executors, administrators, or assigns, or unto such person or persons as they shall direct or appoint, for all the residue then unexpired of the aforesaid term of five hundred years, free from all incumbrances by him the said [*trustee for mortgagees*], his executors, administrators, and assigns thereon, in the meantime to be made or done, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. And *it is hereby declared by and between all the said parties to these presents,* that the assignment hereinbefore expressed to be hereby made to the said [*trustee for mortgagees*], his executors, administrators, and assigns, was so as aforesaid made, Upon trust that he the said [*trustee for mortgagees*], shall and will within three days next ensuing the date of these presents, by indorsement thereon, well and effectually assign the aforesaid annual sum, fee-farm rent, or yearly rent-charge, and premises hereinbefore expressed to be hereby assigned, unto the said [*mortgagees*], their executors, administrators, and

42. By trustees of a term.

Subject to proviso for redemption.

Declaration that within three days trustee for mortgagees shall assign to them.

(*g*) There being other unsatisfied charges, the term is to be re-assigned to the trustees of the will, and not to the heir-at-law.

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assigns, for all the residue which shall be then unexpired of the aforesaid term of five hundred years therein; but subject, nevertheless, to the proviso or condition for redemption hereinbefore contained. AND the said [*trustees of the term*], for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, but each of them as to and concerning his own acts, deeds, and defaults only, hereby covenant with the said [*trustee for mortgagees*], his executors, administrators, and assigns, that they the said [*trustees of the term*] (*have not encumbered*). (*Covenant by heir-at-law with mortgagees to pay the sum of* 3,789*l.* 7*s.* 9*d. and interest, and covenants by heir-at-law with trustee for mortgagees*) *that the trustees of the term and heir, or some or one of them, have right to assign, &c.* AND LASTLY, *it is hereby declared and agreed by and between the said parties hereto,* and particularly by the said [*heir-at-law*], (party hereto), that they the said [*trustees of the term*], their executors, administrators, and assigns, shall and will, from time to time and at all times hereafter, stand and be possessed of and interested in all and singular the manors, messuages, farms, lands, tenements, and hereditaments, and real estates, as well freehold as copyhold or customary, late of the said [*testator*], deceased, and comprised in and devised by his said codicil, (save and except the annual sum, fee-farm rent, or yearly rent-charge hereinbefore expressed to be hereby assigned), during the residue of the term of five hundred years created therein by the same codicil, for the purpose of indemnifying the same annual sum, fee-farm rent, or yearly rent-charge, and also the said [*mortgagees*], their executors, administrators, and assigns, and their lands and tenements, goods and chattels, of and from the payment of an annuity of £—— to [A. B.], which is charged on the annual sum, fee-farm rent, or yearly rent-charge hereinbefore expressed to be hereby assigned, (together with other estates), by the last will and testament of [*former owner*], bearing date on or about the —— day of ——, 18—; And also of, from, and against all actions, suits, costs, charges, damages, and expenses, which the annual sum, fee-farm rent, or yearly rent-charge hereinbefore expressed to be hereby assigned, shall at any time or times hereafter be liable to, or which shall be brought, commenced, or prosecuted, paid, sustained, or borne against or by, or which shall ensue or

Covenant by trustees of term that they have not encumbered;

by heir-at-law to pay, &c.

Declaration that trustees will stand possessed of the rest of testator's property, in trust to exonerate the rent hereby assigned from certain charges.

be occasioned to the said [*mortgagees*], their executors, administrators, or assigns, for or by reason or means or on account of the non-payment of the aforesaid annuity, or any part thereof, or for or by reason or means or on account of any act, transaction, matter, or thing whatsoever, on account thereof, or in anywise relating thereto. IN WITNESS &c. 42. BY TRUSTEES OF A TERM.

SCHEDULE REFERRED TO IN THE PRECEDING INDENTURE.

Schedule.

Names of Fields.	Contents by Estimation.	Tenants.	Boundaries.
Greenacre.	*a.* *r.* *p.* 7 0 0	John Smith.	On the north by a road, &c.

43. ASSIGNMENT (*indorsed on the preceding Mortgage*) *by the Trustee for the Mortgagees in pursuance of the Trust of that Deed.*

43. ASSIGNMENT BY TRUSTEE IN THE LAST PRECEDENT.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named [*trustee for mortgagees*], of the one part; and the within-named [*mortgagees*], of the other part: WITNESSETH, that, in pursuance of the trust reposed in the said [*trustee*] in and by the within-written indenture in this behalf, and in consideration of the sum of 10*s.* of lawful British money, paid by the said [*mortgagees*] to the said [*trustee*] at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*trustee*] *Hath* bargained, sold, assigned, transferred, and set over, and by these presents *Doth* &c., unto the said [*mortgagees*], their executors, administrators, and assigns, the within-mentioned annual sum, fee-farm rent, or yearly rent-charge of £300; Together with all powers of distress and entry, in case of non-payment of the same, as in and by the within-recited indenture of release are provided or contained for the recovery of the same, And all other the premises in and by the within-written indenture assigned: And all the estate, &c.; TO HAVE AND TO HOLD, perceive, receive, and take the annual sum, fee-farm rent, or yearly

43. ASSIGNMENT BY TRUSTEE IN THE LAST PRECEDENT.

rent-charge of £300 and premises above expressed to be hereby assigned unto the said [*mortgagees*], their executors, administrators, and assigns, from henceforth during all the residue and remainder of the within-mentioned term of five hundred years, and for all other the estate, term, and interest of the said [*trustee*] therein; *But subject, nevertheless,* to the proviso or condition for redemption in the within-written indenture contained in that behalf. (*Covenant by trustee that he has not encumbered*). IN WITNESS &c.

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44. TO SECURE MONEYS ADVANCED UNDER A DECREE OF CHANCERY.

44. MORTGAGE *under a* POWER, *by* HUSBAND *and* WIFE, *by* CHARGE *and* APPOINTMENT *of a Term, to secure Moneys advanced by the Trustees of a Will under the* DIRECTION *of the* COURT *of* CHANCERY, *a Suit having been instituted pursuant to a Direction contained in the Will for that purpose* (*a*).

Parties.

THIS INDENTURE, &c., BETWEEN [*husband mortgagor*] of &c.; and [*wife*], his wife, of the first part; [*receiver*], of &c., of the second part; and [*mortgagees*], of &c., of the third part.

Recitals of will, &c.

WHEREAS (*Recite the will, whereby the testator devises his real estate in strict settlement, and directs the rents to be accumulated during minorities, and the accumulations to be invested in the purchase of lands, or on mortgage; and directs a suit to be instituted in the Court of Chancery, for the execution of the trusts of his will. And recite death of testator, and proof of will by the mortgagees, the executors*).

Of suit in Chancery for carrying trusts of will into execution.

AND WHEREAS, in pursuance of the direction in that behalf contained in the said will of the said [*testator*], a suit was instituted in the High Court of Chancery, shortly after the decease of the said testator for carrying the trusts and purposes of the said will into execution; in which suit the said A., B., and C., infants, by D., their mother and next friend, and the said D., the widow of the said testator, and others, were plaintiffs; and

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(*a*) The circumstances in this case are the converse of those to which the precedent, *ante*, p. 39, is applicable: *there* the money was *paid* into the Bank to the credit of the cause; *here* it is *advanced* out of the Bank by the court.

44. TO SECURE MONEYS ADVANCED UNDER A DECREE OF CHANCERY.

the said [*mortgagees*], and several other persons then out of the jurisdiction of the said Court, were defendants. AND WHEREAS, by a decree made on the hearing of the said cause, by his Lordship, the Master of the Rolls, dated the —— day of ——, *It was* (amongst other things) *ordered and decreed*, that the will of the said [*testator*], the testator, was well proved, and ought to be established, and the trusts thereof performed and carried into execution; *And it was ordered*, that it should be referred to Mr. ——, then one of the Masters of the said Court, to take an account of the said testator's personal estate, not specifically bequeathed, come into the hands of the defendants, [*mortgagees*], his executors, or any of them, or into the hands of any other person or persons, by their or any of their order, for their or any of their use; And the said Master was also to take an account of the said testator's debts, funeral expenses, and legacies, and compute interest at the rates and in manner therein mentioned; *And it was ordered*, that the said testator's personal estate, not specifically bequeathed, should be applied in payment of his debts and funeral expenses, in a course of administration, and then in payment of his legacies, with such preferences as therein mentioned; and the said Master was to appropriate and set apart a sufficient part of the residue of the said testator's personal estate, in 3*l.* per centum Consolidated Bank Annuities, to answer the growing payments of certain annuities; *And it was ordered*, that the sum of £40,000, or thereabouts, part of the clear surplus of the said testator's personal estate, should be laid out in the purchase of a freehold mansion and estate, either with or without lands of any other tenure than freehold, in such county of England, or in such parts thereof, or in any of them, as were mentioned in the said testator's will, pursuant to the directions thereof; *And it was ordered*, that the residue of such surplus of the said testator's personal estate should be laid out in the purchase of lands of inheritance in England, pursuant to the directions of the said will; and such mansion-house, estate, and lands, when purchased, were to be settled upon such persons, and to and for such uses, intents, and purposes, as were mentioned and expressed in the said testator's will of and concerning the same; And when a proper purchase or purchases should offer, wherein to invest the said sum of £40,000, or thereabouts, and the said surplus of the said

Decree of the Court.

Reference to the Master to take an account of the testator's personal estate, &c.

Directions as to the investment of certain moneys in a purchase.

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testator's personal estate, any of the parties were to be at liberty to apply to the said Court concerning the same, as they should be advised: And in the meantime *it was ordered*, that the said sum of £40,000, and the said surplus of the said testator's personal estate, should be placed out at interest, from time to time, on real security, by way of mortgage, with the approbation of the said Master, in the names of the defendants, the trustees named in the said testator's will; and they were to declare the trusts thereof accordingly; and the interest to arise thereon was to be paid and applied to and for the same uses, trusts, intents, and purposes as were directed by the said testator's will of and concerning the residue of his personal estate; And, after noticing the direction given by the said testator in his said will, that his executors should, immediately after his decease, institute a suit in the said Court for carrying the trusts and purposes of his will into execution, and that, by the seventh codicil to the said will, he the said testator appointed the said [*receiver*] to be sole receiver of his real and personal estates, and earnestly recommended and desired that the said [*receiver*] should be appointed the receiver and agent in the suit by his said will directed to be instituted in the said Court, with the usual allowances; *It was ordered*, that the said appointment of the said [*receiver*], as such receiver and agent, with the usual allowances, should be confirmed: AND WHEREAS the said cause came on to be re-heard before his said Lordship on the —— day of ——, 18—, upon the petition of the said defendants [*mortgagees*], when *it was ordered* that the said decree, made on the hearing of the said cause, dated the —— day of ——, should be varied in certain particulars relating to the security to be given by the said [*receiver*], as such receiver as aforesaid; and, with the said variation, it was ordered that the said decree should be affirmed: AND WHEREAS, by an order of the said Court of Chancery, bearing date the —— day of ——, 18—, made in the said cause, on the petition of the said defendants [*mortgagees*], *It was ordered*, that so many of the Exchequer bills therein mentioned then remaining on the credit of the said cause, or so many of them as should from time to time remain on the credit of the said cause, or so many of any other Exchequer bills purchased with the money arising from any of the said bills, when they should be paid off, as with

And in the meantime to be laid out in mortgage.

As to the appointment of a receiver.

Recital of order varying the decree.

Recital of order as to the payment and application of moneys to be placed out on security.

44. TO SECURE MONEYS ADVANCED UNDER A DECREE OF CHANCERY.

such sums of cash as should at the respective times of the sales thereby directed remain on the credit of the said cause, would raise such sum or sums as Mr. ——, one of the said Masters of the said Court, (to whom the said cause now stands referred), should, pursuant to the said decree of the —— day of ——, 18—, from time to time certify to be proper to be raised for the purpose of being laid out on mortgage, be from time to time sold, with the privity of the Accountant-General of the said Court; and for that purpose *it was ordered* that the same should be delivered out to one of the cashiers of the Bank, who was to receive the money to arise by such sale or sales, and, on receipt thereof, was to pay the same into the Bank, with the privity of the said Accountant-General, to be there placed to the credit of the said cause; *And it was ordered* that the money to arise by such sale or sales, and such cash as should, at the respective times of such sale or sales, remain to the credit of the said cause, should, upon the execution of such mortgages respectively by all proper parties as the Master should direct, (such execution to be certified by the said Master), be paid to such person or persons as the said Master should direct; and, for those purposes, the said Accountant-General was, from time to time, to draw on the Bank, according to the form prescribed by the act of Parliament, and the general rules and orders of the said Court in that case made and provided. AND WHEREAS (*Recite marriage settlement of* [*mortgagors*], *giving them power to mortgage*): AND WHEREAS the said [*mortgagors*] lately made an application for an advance and loan to them of the sum of £20,700, part of the surplus of the personal estate of the said [*testator*], the testator, by way of mortgage, on the security of the said —— and other hereditaments which are hereinafter particularly mentioned, and intended to be hereby subjected and charged, and also limited and appointed; and a state of facts, and a proposal for the said loan, having been submitted to the said Master ——, he the said Master, by his report, bearing date the —— day of ——, did certify that he approved of the said proposal, and thereupon he had considered, settled, and approved of a draft of an indenture of mortgage upon the estate proposed as a security for the said loan, (being this present indenture); and in testimony of his approbation thereof, had signed his name and allowance in the margin of the last skin of the said indenture of mortgage, and his name in the margin of

Recital of marriage settlement of mortgagors, with power to charge.

Application by mortgagors to mortgagees for loan, on security.

Report of Master approving the same.

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every other skin thereof; which said indenture was to be executed by the said [*mortgagors*]; and, upon the execution of the same indenture by the said parties being duly proved before him, he should certify the same, and that it was proper that the said sum of £20,700 should be raised in the manner mentioned in the said indenture of the —— day of ——, and paid to the said [*mortgagors*]. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said proposal, and for and in consideration of the sum of £20,700, of lawful British money, at or upon the sealing and delivery of these presents, to the said [*mortgagors*] in hand paid in the manner mentioned in the said order of the —— day of ——, out of the produce of part of the Exchequer bills remaining on the credit of the said cause instituted and pending in the Court of Chancery as aforesaid; and the cash at the time of the sale of such Exchequer bills, remaining to the credit of the said cause, pursuant to the said last-mentioned order and the certificate of the said Master —— in that behalf, the receipt of which sum of £20,700 they the said [*mortgagors*] do hereby acknowledge, and of and from the same do, and each of them doth, acquit, release, and discharge the said [*receiver*], his heirs, executors, and administrators; and also the said [*mortgagors*], and every of them, and the heirs, executors, administrators, and assigns of them and every of them, for ever, by these presents, and pursuant to and in exercise and execution &c., (*ut ante*, p. 196), do, by this deed, &c. SUBJECT AND CHARGE (*parcels and general words*); And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of all and singular the said ——, hereditaments, and premises, to and with the payment to the said [*mortgagees*], their executors, administrators, or assigns, of the sum of £20,700 of lawful British money, with interest for the same after the rate of five pounds for every one hundred pounds by the year, on or at the days or times, and in the manner, hereinafter mentioned or appointed for the payment thereof respectively. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance and further performance of the said proposal, and for the consideration hereinbefore mentioned, and for further securing the payment of the said sum of £20,700 and interest to the said [*mortgagees*], their executors, administrators, and assigns, and pursuant to, and in exercise and execution, &c., (*ut ante*, p. 196), do, by this deed, &c., limit and appoint, that all and singular the ——,

Testimonium.

In consideration of mortgage-money paid to mortgagors, in the manner directed by order of the court,

mortgagors, in execution of their power, subject and charge.

Further *testatum.*

Mortgagors, in further execution of their power, limit the premises to mortgagees,

hereditaments, and premises hereinbefore subjected and charged to and with the payment of the said sum of £20,700 and interest, or expressed and intended so to be, with their appurtenances, shall go and remain, To THE USE of the said [*mortgagees*], their executors, administrators, and assigns, for and during the term of one thousand years, to commence and be computed from the day next before the day of the date of these presents, and thenceforth next ensuing and fully to be complete and ended, without impeachment of or for any manner of waste; *Subject, nevertheless,* to the proviso or agreement hereinafter contained for making void the same term, that is to say; PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties to these presents, that, if the said [*mortgagors*], or either of them, or the person or persons for the time being seised of or entitled to the —— and other hereditaments hereinbefore appointed and demised, or intended so to be, in remainder or reversion expectant on the said term of one thousand years, shall and do pay or cause to be paid to the said [*mortgagees*], their executors, administrators, or assigns, [*principal sum and interest*], then and in such case, and immediately after such payment shall be so made as aforesaid, the said term of one thousand years shall absolutely cease and determine. (*Covenant* by *husband-mortgagor for payment of principal and interest, and that he and his wife had power to charge and appoint, and for quiet enjoyment after default free from incumbrances, and for further assurance. Proviso for quiet enjoyment until default, by the mortgagors*), or other the person or persons for the time being entitled to the said —— and hereditaments, in reversion or remainder expectant on the determination of the said term of one thousand years. [*And lastly* (*b*), the said [*mortgagees*] do hereby testify and declare, that they the said [*mortgagees*], their executors, administrators, and assigns, shall and will stand and be possessed of and interested in the sum of £20,700 and interest hereby secured, or intended so to be, upon the trusts and for the intents and purposes upon and for which the same are or ought to be held, under the said will and codicil of the said [*testator*], the testator, and the decrees hereinbefore recited]. IN WITNESS &c.

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for the term of one thousand years.

Proviso for redemption.

(*b*) This clause is unnecessary.

45. UNDER THE GENERAL INCLOSURE ACT.

45. MORTGAGE *by* DEMISE, *by* TENANT *for* LIFE, *to raise Money to pay the Expenses of an Inclosure (in pursuance of the Power in the General Inclosure Act)* (*a*).

Parties.

THIS INDENTURE, made &c., BETWEEN [*mortgagor tenant for life*], of the first part; [*commissioners of local Inclosure Act*], of &c., (commissioners appointed by and acting in execution of an act of Parliament, passed in the —— year of the reign of her present Majesty, intituled (*state title of act*), of the second part; and [*mortgagee*], of &c., of the third part. (*Recite marriage settlement of mortgagor, whereby certain lands were limited to mortgagor for life, with remainders over*).

Recital of settlement.

Recital of Inclosure Act,

AND WHEREAS, by the said act of the —— year of the reign of her present Majesty, hereinbefore referred to, it is enacted that the said [*commissioners*], and their successors to be appointed as therein mentioned, should be commissioners for dividing, allotting, and inclosing the open and common fields, meadows, pastures, commonable lands, and waste grounds, and for putting the said act in execution, subject to the regulations of an act passed in the forty-first year of the reign of George the Third, intituled "An act for consolidating in one act certain provisions usually inserted in acts of inclosure, and for facilitating the mode of proving the several facts usually required in the passing of such acts," except in such cases as the same was varied by the act now in recital.

—of allotments made by commissioners,

AND WHEREAS the said [*commissioners*], as commissioners acting in execution of the above-recited act of her present Majesty's reign as aforesaid, have, in pursuance of the said act, set out and allotted unto the said [*mortgagor*], in lieu of his lands and grounds, rights, commons, and other rights and interests to which he is so entitled for his life, as aforesaid, of and in the lands and grounds by the above-recited act directed to be divided and

(*a*) As to the powers of tenants for life, &c. to mortgage under the General Inclosure Act, *vide ante*, Vol. 5, p. 195.

45. UNDER THE GENERAL INCLOSURE ACT.

inclosed, and exonerated from tithes, the several allotments, lands, and hereditaments, hereinafter described and expressed to be hereby respectively demised, as they the said [*commissioners*], do hereby respectively testify and declare. AND WHEREAS the said [*commissioners*], as commissioners as aforesaid, by a certificate or instrument in writing, under their respective hands, bearing date the —— day of —— last, did consent that the sum of £—— should be charged on the allotments hereinbefore mentioned to have been made to the said [*mortgagor*], containing —— acres, —— roods, —— perches (*b*), which said sum of —— they did adjudge to be necessary to pay and defray the proportion of the said [*mortgagor*] of the charges and expenses incident to and attending the obtaining the hereinbefore in part recited act of the —— year of her present Majesty, and carrying the same into execution, and also the charges and expenses of charging the said lands by these presents. AND WHEREAS the said [*mortgagor*], being desirous of availing himself of the powers which in and by the said act of the 41st year of George the Third are given to tenants for life and tenants in tail, to charge their respective allotments with any sum or sums of money which the commissioners should, by their award, or by writing under their hands, either before or after the execution of such award, adjudge necessary to defray the respective shares of such proprietors of the expenses of obtaining any inclosure act and carrying the same into execution, and to mortgage, demise, or otherwise to subject the lands so to be charged, to such person or persons as should lend the same for a term of years, hath requested the said [*mortgagee*] to advance the said sum of £—— at interest, upon the security of the allotments, lands, and hereditaments hereinafter described, and expressed to be hereby respectively demised, which he the said [*mortgagee*] hath consented to do, with the privity and consent of the said commissioners, parties hereto (*c*). NOW

—of certificate of commissioners as to expenses.

—Of the desire of tenant for life to avail himself of the powers of the act as to raising money to pay the expenses.

Testatum.

(*b*) The quantity is stated, in order to shew that the statutory allowance of £5 an acre is not exceeded.

(*c*) The concurrence of the commissioners in the mortgage is not required by the act. It is sufficient that they have certified the amount to be raised. The only object in procuring their concurrence, therefore, is to obtain from them a recognition of the fact of their having given the certificate.

Concurrence of the commissioners not requisite.

45. UNDER THE GENERAL INCLOSURE ACT.

In consideration of money advanced, mortgagor, in pursuance of the act of 41 Geo. 3, charges allotments with mortgage-money and interest.

THIS INDENTURE WITNESSETH, that, in pursuance of the agreement so entered into as hereinbefore mentioned, and also for and in consideration of the sum of £—— of lawful British money to the said [*mortgagor*] in hand paid by the said [*mortgagee*], at or before the sealing and delivery of these presents, with the privity and consent of the said [*commissioners*] (*d*), as commissioners as aforesaid, (testified by their severally executing these presents), the receipt of which said sum of £—— he the said [*mortgagor*] doth hereby acknowledge, and from the same doth release and discharge the said [*mortgagee*], his executors, administrators, and assigns, for ever, by these presents, he the said [*mortgagor*], in pursuance and by virtue of the power or authority for that purpose given or reserved in and by the above recited act of the 41st year of the reign of George the Third, and of every other power, right, and authority whatsoever, enabling him in this behalf, *Hath* charged, And by these presents *Doth* absolutely charge, the several allotments, pieces, or parcels of land and hereditaments hereinafter described and expressed to be hereby demised, with their appurtenances, with the payment of the sum of £—— unto the said [*mortgagee*], his executors, administrators, and assigns, with interest for the same after the rate of £5 for every £100 by the year, at the time and in manner hereinafter mentioned: AND, for the more effectually securing unto the said [*mortgagee*], his executors, administrators, and assigns, payment of the said sum of £—— and interest, he the said [*mortgagor*], *Hath* granted, mortgaged, leased, and demised, and by these presents *Doth* &c., unto the said [*mortgagee*], his executors, administrators, and assigns, (*parcels as described in the award*), together with all ways, &c., and the reversion, &c.: TO HAVE AND TO HOLD the said several allotments, lands, hereditaments, and all and singular other the premises hereinbefore described and expressed to be hereby demised, with their appurtenances, unto the said [*mortgagee*], his executors, administrators, and assigns, from the day next before the day of the date of these presents, for and during the term of five hundred years thence next ensuing and fully to be complete and ended, [YIELDING AND PAYING, therefore, yearly and every year during the continuance of

Habendum to mortgagee for 500 years.

Reddendum.

(*d*) *Vide ante*, p. 223, note (*c*).

45. UNDER THE GENERAL INCLOSURE ACT.

this demise the rent of one pepper-corn on the —— day of —— in every year, if the same shall be lawfully demanded (*e*)]; *Subject, nevertheless,* to the proviso or condition hereinafter contained, that is to say, PROVIDED ALWAYS, and these presents are upon this express condition, that if the said [*mortgagor*], his heirs, executors, or administrators, or the person or persons who shall for the time being be entitled to redeem the several allotments, lands, and other hereditaments hereby demised or intended so to be, shall pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns (*f*), the sum of £——, with interest for the same from the day of the date hereof, after the rate of £5 for every £100 by the year, free from taxes, and without any deduction whatsoever, Then, and in such case, and at all times thenceforth, these presents, and the term and estate hereby granted, and every thing herein contained, shall cease, determine, and be absolutely void, to all intents and purposes whatsoever. AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagee*], his executors, administrators, and assigns, That he the said [*mortgagor*], his heirs, executors, or administrators, [or the person or persons for the time being seised of or entitled to the said allotments, lands, and hereditaments, subject to the said term of five hundred years], shall and will, on the —— day of —— next, pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £——; *And also* that he the said [*mortgagor*], his heirs, executors, or administrators, [or the person or persons for the time being seised of or entitled to the said allotments, lands, and hereditaments, subject to the said term of five hundred years], shall and will, during such time as the said principal sum of £—— shall continue upon the security intended to be hereby made, pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, interest upon or in respect of the said

Proviso for redemption.

Covenant by mortgagor to pay the principal sum.

Special covenant to keep down the interest.

(*e*) The *reddendum* is quite unnecessary.

(*f*) In the draft from which this precedent was taken, and which was prepared by a gentleman of great eminence, a day was fixed in the proviso for redemption, in the usual manner, for payment of the principal and interest; but it is conceived that this is incorrect. *Vide ante,* Vol. 5, p. 197.

As to the proper form of the proviso for redemption.

45. UNDER THE GENERAL INCLOSURE ACT.

sum of £——, or upon or in respect of so much thereof as shall from time to time remain due and owing, after the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of —— in each year, the first half-yearly payment to be made on the —— day of —— next ensuing, to the intent that no person becoming possessed of or entitled to the allotments, lands, and hereditaments expressed to be hereby demised, after the decease of the said [*mortgagor*], shall be liable to pay any further or larger arrear of interest than for six calendar months preceding the time when the title to such possession shall have commenced: *And also* that the said [*mortgagor*] now hath in himself good right, full power, and lawful and absolute authority, to grant, mortgage, lease, and demise the allotments, lands, and hereditaments hereinbefore described, and intended to be hereby demised, unto the said [*mortgagee*], his executors, administrators, and assigns, for the term of five hundred years, in manner aforesaid, and according to the true intent and meaning of these presents; *And that,* so long as any sum or sums of money shall be and remain owing and unpaid upon or by virtue of this security, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, peaceably and quietly to enter upon, and to hold and enjoy, all and singular the allotments, lands, and hereditaments, hereinbefore described, and intended to be hereby demised, and to receive the rents and profits thereof for his and their own use henceforth, during the said term of five hundred years hereby granted, without any lawful eviction, interruption, claim, or demand whatsoever, from or by the said [*mortgagor*], or any other person or persons whomsoever; *And that* clearly and absolutely exonerated and discharged, or otherwise well and sufficiently kept harmless and indemnified from and against all and all manner of former and other gifts, grants, mortgages, titles, charges, and incumbrances whatsoever; *And also,* that he the said [*mortgagor*], and every other person whosoever lawfully claiming any estate, right, title, charge, or interest in, to, or out of the said premises or any part thereof, will, at all times hereafter, at his and their own costs and charges, on the request of the said [*mortgagee*], his executors, administrators, or assigns, make, do, and execute, or cause to be made, &c., every such further act, deed, conveyance, and assurance

That mortgagor has power to demise.

For quiet enjoyment after default.

Free from incumbrances.

And for further assurance.

whatsoever, for the more effectually demising and assuring the several allotments, lands, and hereditaments hereinbefore described, and intended to be hereby demised, unto the said [*mortgagee*], his executors, administrators, and assigns, for all the then residue of the said term of five hundred years therein, in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably required. AND *it is hereby agreed and declared*, that, until default shall be made in payment of the said sum of £——, or some part thereof, or the interest thereon, contrary to the true intent and meaning of the covenant in that behalf hereinbefore contained, it shall be lawful to and for the said [*mortgagor*] and his assigns, and other the person and persons for the time being entitled in possession to the said allotments, lands, and hereditaments, subject to the said term of five hundred years, to hold and enjoy the said hereditaments, and to receive the rents and profits thereof for his and their own use, without any lawful hinderance or interruption whatsoever from or by the said [*mortgagee*], his executors, administrators, or assigns. IN WITNESS &c.

45. UNDER THE GENERAL INCLOSURE ACT.

Until default mortgagor to enjoy.

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46. MORTGAGE *in* FEE, *to secure the* REDEMPTION-PRICE *of an* ANNUITY *and Interest, in Consideration of the Annuitant's releasing his Annuity:* DECLARATION *of* TRUST *of* TERM *by his Trustee, to attend the Inheritance.* (*A short Form*).

46. TO SECURE THE REDEMPTION-PRICE OF AN ANNUITY.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*annuitant*], of &c., of the first part; [*mortgagor*], of &c., of the second part; [*releasee to uses*], of &c., of the third part; the said [*annuitant in his character of mortgagee*], of the fourth part; and [*trustee of term*], of &c., of the fifth part. (*Recite by what means mortgagor became entitled in fee, and also recite Indenture of grant of annuity of* £100, *with proviso for re-purchase on payment of* £1,025, *and all the arrears; and demise to trustee of lands for ninety-*

Parties.

Recitals.

46. TO SECURE THE REDEMPTION-PRICE OF AN ANNUITY.

That grantee of annuity had proposed to redeem.

nine years, upon trusts for securing annuity; and also Warrant of attorney). AND WHEREAS the said [*mortgagor*] having intimated to the said [*mortgagee*] his intention to redeem the annuity granted by the hereinbefore-recited indenture, in pursuance of the power in that behalf therein contained, the said [*mortgagee*] hath proposed to release to the said [*mortgagor*] the same annuity, in consideration of the said [*mortgagor*] executing to him a mortgage of the said hereditaments, for securing the said sum of £1,025, (the price stipulated to be paid for the redemption of the said annuity as aforesaid), and interest thereon, as hereinafter contained, to which proposal the said [*mortgagor*] hath assented and agreed.

Payment of arrears.

AND WHEREAS the said [*mortgagor*] hath paid to the said [*mortgagee*] all arrears of the said annuity down to the day of the date hereof, as he the said [*mortgagee*] doth hereby acknowledge.

Satisfaction entered on judgment.

AND WHEREAS, in pursuance of the said agreement, the said [*mortgagee*] hath caused satisfaction to be entered on the record of the judgment entered up against the said [*mortgagor*] by virtue of the hereinbefore-recited warrant of attorney for securing the said annuity, as aforesaid.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement on the part of the said [*mortgagee*], and in consideration of the release and assurance hereinafter made by the said [*mortgagor*], He the said [*mortgagee*] *Hath* remised and released and by these presents *Doth* absolutely remise and release under the said [*mortgagor*], his heirs, executors, and administrators, all and all manner of actions, suits, causes of action and suit, claims, and demands whatsoever, which the said [*mortgagee*] now hath, or which he the said [*mortgagee*], his heirs, executors, or administrators, shall at any time hereafter have against or upon the said [*mortgagor*], his heirs, executors, or administrators, or any or either of them, by reason of the annuity of £100 so granted by the said [*mortgagor*] as aforesaid, or any covenant or agreement contained in the hereinbefore-recited indenture of the —— day of ——, relating thereto.

Mortgagee, in his character of annuitant, releases mortgagor from all claims in respect of annuity.

Further *testatum.*

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement on the part of the said [*mortgagor*], and in consideration of the premises, and of the release hereinbefore contained on the part of the said [*mortgagee*], and for securing to the said [*mortgagee*], his executors, administra-

46. TO SECURE THE REDEMPTION-PRICE OF AN ANNUITY.

tors, and assigns, the payment of the sum of £1,025 (*a*) and interest, in manner hereinafter expressed, and in consideration &c., (*nominal consideration*); He the said [*mortgagor*] *Hath* granted, bargained, sold, and released, and by these presents *Doth* grant &c.; And the said [*mortgagee*] *Hath* remised, released, and quit-claimed, and by these presents *Doth* &c. unto the said [*releasee to uses*] and his heirs (*in the actual possession*), &c. (*Describe parcels with general words*). *And all* the estate &c. TO HAVE AND TO HOLD the —— and hereditaments hereby released, or intended so to be, unto the said [*releasee to uses*] and his heirs; TO THE USE of the said [*mortgagee*], his heirs and assigns, for ever; *Subject, nevertheless,* to the proviso for redemption hereinafter contained. (*Add proviso for redemption on payment of* £1,025 *and interest, and* (*if so intended*) *trusts for sale; also usual covenants*). AND THIS INDENTURE FURTHER WITNESSETH, that it is hereby declared and agreed by and between the said parties to these presents, that the said [*trustee of term*], his executors, administrators, or assigns, shall henceforth stand and be possessed of the ——, hereditaments, and premises demised to him in and by the hereinbefore-recited indenture of the —— day of —— as aforesaid, for all the residue now unexpired of the term of ninety-nine years thereby granted, and for all other the estate, term, and interest of the said [*trustee*] therein, absolutely freed and discharged from the trusts and purposes expressed and contained in the hereinbefore-recited indenture, and in lieu thereof, upon the trusts and for the intents and purposes hereinafter contained, (that is to say), *In trust* for better securing the payment of the principal sum of £1,025 and interest hereby intended to be secured as aforesaid; and, for that purpose, to assign and dispose of the said hereditaments and premises from time to time, in such manner as the said [*mortgagee*], his executors, administrators, or assigns (*b*), shall direct or appoint; and, in the meantime,

Mortgagor grants, and mortgagee releases, to releasee to uses.

Habendum,

To the use of mortgagee in fee.

Further *testatum.*

Declaration of trust of term.

(*a*) The deed will, of course, be liable to an *ad valorem* mortgage stamp-duty applicable to a pecuniary consideration of this amount.

(*b*) If there are trusts for sale, say—

"as the said [*mortgagee*], his heirs or assigns, in the execution of the trusts hereinbefore contained,"

46. TO SECURE THE REDEMPTION-PRICE OF AN ANNUITY.

to attend and wait upon the inheritance of the said hereditaments, in order to protect the same from all mesne incumbrances (if any such there be) (*c*). IN WITNESS &c.

Annuity sometimes kept on foot.

(*c*) If the term is assigned by the termor to another trustee to attend the inheritance, proceed *ut ante*, p. 190, omitting, if there is no trust for sale, the words relating to that trust. Some persons not only keep on foot the term, (which is always a proper precaution), but also the annuity, making the annuitant declare, that he holds it in trust for better securing the principal and interest secured by the mortgage.

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47. FURTHER CHARGE, MAKING INTEREST PRINCIPAL.

47. FURTHER CHARGE (*by* INDORSEMENT *on* MORTGAGE *Deed*) *for the purpose of* CONVERTING INTEREST *into* PRINCIPAL (*a*). (*Variation where Mortgagee agrees not to call in Principal for a certain Period, provided the Interest be punctually paid*).

THIS INDENTURE, made the —— day of ——, 18—,

Parties. BETWEEN the within-named [*mortgagor*], of the one part; and the within-named [*mortgagee*], of the other part.

Recitals. WHEREAS the whole principal sum of £1,000 secured by the within-written indenture of mortgage, and an arrear of two years' interest thereon, amounting to the sum of £100, are now due and owing to the said [*mortgagee*], as the said [*mortgagor*] doth hereby acknowledge. AND WHEREAS the said [*mortgagee*] hath applied to the said [*mortgagor*] to pay the sum of £100 so due for interest as aforesaid, but he, being unable so to do, hath proposed and agreed to charge the same as a further principal sum on the hereditaments comprised in the said indenture of mortgage in

Testatum: manner hereinafter expressed (*b*). NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said

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(*a*) As to converting interest into principal, *vide ante*, Vol. 5, p. 390.

(*b*) Add, if covenant, *ut post*, p. 232, is inserted—

"And it hath been further agreed between the said parties, that the said [*mortgagee*] shall enter into the covenant hereinafter contained."

47. FURTHER CHARGE, MAKING INTEREST PRINCIPAL.

agreement, and in consideration of the premises, the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said [*mortgagee*], his executors and administrators, that all and singular the —— and hereditaments comprised in, or intended to be assured by, the within-written indenture, with their appurtenances, shall henceforth become, continue and be charged with, and be a security unto the said [*mortgagee*], his executors, administrators, or assigns, for not only the repayment of the principal sum of £1,000 secured by the within-written indenture, with interest thereon from the date hereof, but also the payment of the sum of £100 now due to the said [*mortgagee*] for interest thereon as aforesaid, and interest on the last-mentioned sum of £100 at the rate of £5 per cent. per annum, from the date of these presents; *And* that no part of the said hereditaments shall be redeemed or redeemable, either at law or in equity, until the full payment to the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £100 and interest, as aforesaid, as well as the said principal sum of £1,000 and interest thereon as aforesaid: (*c*) AND the said [*mortgagor*], doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagee*], his executors and administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, will pay unto the said [*mortgagee*], his executors, administrators, or assigns, on the —— day of —— next, in the common dining-hall &c., the sum of £100 hereby charged on the hereditaments hereinbefore mentioned as aforesaid, with interest thereon at the rate of £5 per cent. per annum from the day of the date hereof, without any deduction or abatement whatsoever: *And also*, that he the said [*mortgagor*], his heirs, and every other person claiming any estate, charge, right, title, or interest, in, to, upon, or out of the hereditaments hereby charged as aforesaid, or intended so to be, shall and will at any time or times hereafter, on the request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs

Mortgagor covenants that mortgaged premises shall be charged, &c.

And to pay sum charged and interest;

and for further assurance.

(*c*) Where the mortgage-deed contains a trust for sale, add covenant, *ut ante*, p. 52. If the object of the present deed be to secure a further sum actually advanced, vary the recital, *ut ante*, p. 50.

47. FURTHER CHARGE, MAKING INTEREST PRINCIPAL.

and charges of the said [*mortgagor*], his heirs, executors, or administrators, make and execute every such further deed, covenant, and assurance whatsoever, for the more absolutely and effectually charging the hereditaments comprised in the within-written indenture with the payment of the said sum of £100, and interest, in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised and required (*d*). IN WITNESS &c.

(*d*) Add, if so intended—

Covenant by mortgagee not to call in principal money for seven years,

"AND THIS INDENTURE FURTHER WITNESSETH that, in consideration of the premises, the said [*mortgagee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagor*], his heirs, executors, and administrators, that he the said [*mortgagee*], his executors, administrators, or assigns, shall not nor will call in the principal sum of £1,000 secured, or intended to be secured, by the within-written indenture, nor the principal sum of £100 hereby secured, or intended so to be, nor any part thereof respectively, nor take or pursue any legal or equitable means or remedies against the said [*mortgagor*], his heirs, executors, or administrators, or against the hereditaments hereby charged or intended so to be, for the recovery of the said several principal sums, or either of them, for and during the period of seven years from the date hereof, provided the interest on the said several principal sums shall, from time to time, be duly and punctually paid by the said [*mortgagor*], his heirs, executors, administrators, or assigns, within fourteen days after the half-yearly days of payment on which the same respectively shall from time to time accrue and become due; provided nevertheless, and it is hereby expressly declared, that in case default shall be made in payment of such interest or any part thereof, within the period aforesaid, then the whole of the said several principal sums shall be immediately recoverable by the said [*mortgagee*], his executors, administrators, or assigns, in the same manner, to all intents and purposes, as if the covenant lastly hereinbefore contained had not been made; and the subsequent acceptance of such interest by the said [*mortgagee*], his executors, admini-

unless default is made in paying the interest.

47. FURTHER CHARGE, MAKING INTEREST PRINCIPAL.

strators, or assigns, shall not operate as a waiver or relinquishment of the benefit of this present proviso.* And the said [*mortgagor*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with the said [*mortgagee*], his executors, administrators, or assigns, that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall not nor will pay off and discharge the said principal sum of £1,000 and £100 respectively secured as aforesaid, or intended so to be, nor either of them, nor any part thereof respectively, before the expiration of the said period of seven years, unless the said [*mortgagee*], his executors, administrators, or assigns, (being authorized so to do by the neglect or default of the said [*mortgagor*], his heirs, executors, administrators, or assigns, in the punctual payment of the interest thereon as aforesaid), shall call in and require payment of the said principal sums respectively."

* If it is not intended (as it usually is) that the privilege of postponing the payment shall be mutual, then, instead of the covenant which follows this reference, insert the following proviso:—

Variation where payment is postponed on one side only.

"PROVIDED ALSO, and it is hereby further declared, that nothing herein contained shall extend or be construed to extend to preclude or prevent the said [*mortgagor*], his heirs, executors, administrators, or assigns, from paying off and discharging the said principal sum of £1,000 at any time hereafter, or the said principal sum of £100 at any time after the same shall have become due and payable according to the tenor and effect of the covenant for the payment thereof hereinbefore contained, the said [*mortgagor*], his heirs, executors, administrators, or assigns, giving to the said [*mortgagee*], his executors, administrators, or assigns, the usual and proper notice of his or their intention so to do."

48. EQUITABLE MORTGAGE.

48. EQUITABLE MORTGAGE IN FEE, *accompanying a Deposit of Title Deeds.* (VARIATION *where the Property is* LEASEHOLD). *Short Equitable Charge of* LANDS *already in* MORTGAGE (*a*).

Parties.

ARTICLES OF AGREEMENT, made the —— day of ——, in the year of our Lord ——, BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part; as follow, (that is to say):

Recital of agreement for loan.

WHEREAS the said [*mortgagee*] hath agreed to lend unto the said [*mortgagor*] the sum of £——, at interest; and for securing the payment thereof, the said [*mortgagor*] hath this day deposited in the hands of the said [*mortgagee*] the several title-deeds hereinafter mentioned, and hath agreed to enter into a covenant to execute to the said [*mortgagee*] an assurance, by way of mortgage, of the hereditaments therein comprised,

Testatum.

in manner hereinafter expressed. NOW THESE PRESENTS WITNESS, that, in pursuance of the said agreement, and in consideration of the sum of £—— lent and advanced by the said [*mortgagee*] to the said [*mortgagor*], at or immediately before the execution of these presents, the receipt whereof the said [*mortgagor*] doth hereby acknowledge, and from the same doth absolutely discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns, he the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said [*mortgagee*], his executors, ad-

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Stamp on equitable charges.

(*a*) An "agreement, accompanied with a deposit of title-deeds, for making a mortgage," is subject to a mortgage stamp; (*vide* stat. 55 Geo. 3, c. 184, *ante*, Vol. 5, p. 519); but this instrument having once borne the *ad valorem* stamp, the mortgage afterwards executed in pursuance of it is liable only to the stamp applicable to a common deed. It will be observed, that some of the clauses in the present instrument are adapted to a case in which the charge is intended as a permanent security, as the covenant to pay &c.; others, to a case where it is resorted to as a temporary expedient, until a regular mortgage can be executed: of this nature is the covenant to return the money, if a title is not made out within a given time.

48. EQUITABLE MORTGAGE.

ministrators, and assigns, that all and every the deeds and writings mentioned in the schedule hereunder written, and so deposited in the hands of the said [*mortgagee*] as aforesaid, shall be and remain a security unto the said [*mortgagee*], his executors, administrators, or assigns, for the payment of the said sum of £——, with interest for the same after the rate of £5 per centum per annum, on the —— day of —— next ensuing, clear of all deductions whatsoever; [and that, until payment of the said sum of £—— and interest as aforesaid, it shall be lawful for the said [*mortgagee*], his executors, administrators, and assigns, to retain all and singular the said deeds and writings for the purpose aforesaid (*b*)]; *And further*, that the said [*mortgagor*], his heirs, (*c*), executors, or administrators, will, when thereunto required by the said [*mortgagee*], his executors, administrators, or assigns, at his or their own costs, effectually convey and assure [by such conveyances and assurances as the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel, shall reasonably require], All and singular the —— and hereditaments comprised in the said deeds and writings, or any of them, unto and to the use of him the said [*mortgagee*], his heirs and assigns for ever (*d*), free from all charges and incumbrances what-

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(*b*) This clause is superfluous. Indeed, the covenant to make a mortgage might safely be omitted, as an equitable mortgagee is entitled, without it, to call upon the mortgagor to execute to him a conveyance of the legal estate.

(*c*) If leasehold, omit "heirs."

(*d*) If the premises are leasehold, say—

Variation, where the premises are leasehold.

"unto the said [*mortgagee*], his executors, administrators, and assigns, for all the estate, term, and interest of the said [*mortgagor*] therein."

Adding, if it is intended that the mortgage should be by way of underlease, in order to exempt the mortgagee from liability to the rent and covenants, (as to which *vide ante*, Vol. 5, pp. 429, 508),

"except the last day of such estate, term, and interest."

Where the leasehold premises are held at a rent, and subject to lessee's covenants, after the word "incumbrances," say—

"except the rent and covenants respectively reserved and contained in the lease under which the said premises are held by the said [*mortgagor*]; but subject to redemption," &c.

48. EQUITABLE MORTGAGE.

soever (except the land-tax, &c.); but subject to redemption, on payment by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £——, with interest, at the time and in the manner aforesaid (*e*). And the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors and administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, will, on the said —— day of —— next, pay unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £——, with interest thereon at the rate of £5 per centum per annum from the date hereof, without any deduction whatsoever; and that, until such mortgage and assurance as aforesaid shall be executed by the said [*mortgagor*], he the said [*mortgagor*], *and his heirs* (*f*), shall and will stand seised of, and interested in, all and singular the hereditaments and premises comprised in the said deeds and writings, or any of them, *In trust* for the said [*mortgagee*], his executors, administrators, and assigns (*g*). In witness &c.

(*e*) Add, if so intended—

Mortgage to contain a power of sale.

"In which said indenture of mortgage shall be contained all usual clauses and covenants, and especially a power enabling the said [*mortgagee*], his *heirs* or assigns*, absolutely to sell the said hereditaments in case of default in payment by the said [*mortgagor*], his heirs, executors, or administrators, of the said principal and interest moneys, or any part thereof, on the said —— day of —— next, with the usual indemnities to purchasers, and other provisions accompanying such power."

(*f*) If leasehold—

Variation applicable to leaseholds.

"and his executors or administrators, shall and will stand possessed of the said premises, for all the term, estate, and interest intended to be comprised in the said indenture of mortgage so to be executed as aforesaid, *In trust*," &c.

(*g*) If so intended, add the following clause:—

Agreement to return mort-

"*And moreover*, that, in case the said [*mortgagor*] or his heirs (*or* "his executors or administrators," *as the case may*

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* If leasehold, say—

"his executors, administrators, or assigns,"

48. EQUITABLE MORTGAGE.

gage-money, if title is not deduced, &c.

be) shall fail to deduce a clear and marketable title to the said ——, hereditaments, and premises, to the satisfaction of the counsel of the said [*mortgagee*], his executors, administrators, or assigns, or to execute such mortgage and assurance thereof as aforesaid, on or before the said —— day of —— next, then, and in such case, the said [*mortgagor*], his heirs, executors, or administrators, will, upon demand, pay to the said [*mortgagee*], his executors, administrators, or assigns, the sum of £—— so lent and advanced by the said [*mortgagee*] as aforesaid, with interest after the rate aforesaid, clear of all deductions whatsoever."*

* The dangers and disadvantages attending mortgages merely equitable have been already pointed out, (*vide ante*, Vol. 5, pp. 124, 455, 483); but, as cases sometimes exist in which such securities are the best that can be obtained, it has been deemed advisable to supply a precedent of a charge of this nature. Indeed, when the mortgagor has an equitable interest only in the lands to be charged, (the legal estate being in a prior incumbrancer or some other person), an instrument simply charging the property, as in the present case, has all the operation that a regular mortgage could have; though it is usual, even under such circumstances, to convey the equitable interest by that species of instrument which would be applicable if the mortgagor had the legal estate. Thus, an equity of redemption in fee is commonly conveyed by lease and release, &c. This plan is generally recommended, upon the ground that, if it should turn out that the instrument by which the mortgagor was supposed to have parted with the legal estate was inoperative, the subsequent conveyance would vest in the second mortgagee. This reason, however, only applies to cases in which the legal estate has once been in the mortgagor.

As to equitable charges in general.

Where the object is simply to charge lands which are already in mortgage, the charge may be created by a short instrument, in the following terms:—

SHORT FORM OF EQUITABLE CHARGE.

"AGREED, this —— day of ——, BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part; as follows: In consideration of the sum of £——, this day lent by the said [*mortgagee*] to the said [*mortgagor*], the receipt &c., the said [*mortgagor*] doth hereby subject and charge all his estate and lands, situate in ——, in the county of ——, now in the occupation of ——, and the inheritance in fee-simple thereof, with the payment to the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £——, and interest thereon at the rate of £5 per centum per annum from the date hereof; subject nevertheless to an indenture of mortgage, bearing date the

SHORT FORM OF EQUITABLE CHARGE.

—— day of ——, whereby the said hereditaments were conveyed to and vested in [A. B.] in fee, for securing the sum of £—— and interest. And the said [*mortgagor*], for himself, his heirs, executors, and administrators, hereby covenants with the said [*mortgagee*], his executors or administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, will pay unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £——, and interest thereon as aforesaid, on the —— day of —— next, without any deduction whatsoever. IN WITNESS &c.

As to the title deeds.

No reference is here made to the title deeds, they being already in the possession of the prior mortgagee. In such cases a memorandum in writing is essential to create a charge, as an oral agreement, that the mortgagee shall hold the deeds for himself and the intended second mortgagee, is inoperative to give the latter any lien upon the property. *Vide ante*, Vol. 5, p. 112.

As to mortgages of advowsons, &c.

The succeeding precedents include principally mortgages of *choses en action* and other personal property. The forms contained in this and the fifth volume embrace precedents of mortgages of real estate, under every ordinary modification of ownership of which it is susceptible. They do not, indeed, comprise precedents of mortgages of some species of property, as advowsons, tithes, impropriate rectories, &c., because mortgages of such property have no peculiarity beyond that which arises from the different terms employed in describing and referring to the subject-matter; and the necessary information on this point may be obtained by referring to any of the precedents in which such description is contained. As to the mode of describing tithes, *vide ante*, Vol. 2, p. 264, 2nd edit.; Advowsons, (mortgages of which should always contain a trust for sale, for the reasons stated *ante*, Vol. 4, p. 240), Vol. 4, p. 240, 2nd ed.; and an Impropriate Rectory, Vol. 5, p. 130, 2nd ed.

49. DEED OF DEFEAZANCE *accompanying a Transfer of* CANAL SHARES (*Variation where the Mortgage is of* STOCK *in the* FUNDS; *also where the debt is already secured by the* BOND *of the* MORTGAGOR *and a* SURETY, *Declaration that the present Security shall not* PREJUDICE *the* MORTGAGEE'S REMEDIES *against the* SURETY)(*a*). 49. OF CANAL SHARES.

THIS INDENTURE, made the —— day of ——, BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. WHEREAS the said [*mortgagor*], being the absolute owner or proprietor of —— shares in the —— Canal Navigation, now subsisting under and by virtue of the provisions of an act of Parliament passed in the —— year of the reign of George the Third, intituled (*insert title of act*)(*b*), lately applied to and requested the said [*mortgagee*] to lend him the said [*mortgagor*] the sum of £—— at interest, on the security of the said shares (*c*) and the covenant of the said [*mortgagor*] hereinafter contained; which the said [*mortgagee*] agreed to do (*d*). AND WHEREAS

Parties.

Recital of mortgagor's being possessed of the shares.

Agreement for loan.

Of statutory transfer.

(*a*) These variations are of course equally adapted to the case of any other species of collateral security accepted from the principal debtor, and the provisions respecting the canal shares are of course equally applicable to shares in railways, or any other incorporated companies, which are transferrable only in a prescribed form.

As to the stamp upon a mortgage for a sum already secured by bond or covenant, *vide ante*, Vol. 5, pp. 532, 534.

(*b*) Where the loan is secured by a transfer of stock, say—

"WHEREAS the said [*mortgagor*], being possessed of the sum of £1,000, £3 per cent. Consolidated Annuities standing in his name in the books of the Governor and Company of the Bank of England, lately applied," &c.

Variation where the mortgage is of stock.

(*c*) "Annuities."

(*d*) If the mortgage is made as a collateral security, as above suggested, for the recital in the text substitute the following:—

"AND WHEREAS, by a bond or obligation bearing date on or about the —— day of ——, the said [*mortgagor*] and [*surety*], of ——, became jointly and severally bound unto

Recital of joint and several bond by mortgagor and surety.

49. OF CANAL SHARES.

the said [*mortgagor*] hath accordingly, by deed-poll, under his hand and seal, bearing even date with these presents, assigned and transferred unto the said [*mortgagee*] the said —— shares in the —— Canal Navigation, in the form and mode prescribed by the said hereinbefore-mentioned act (*e*), and which assignment has been, or is intended to be, registered at the office of the proprietors of the said —— Canal Navigation at ——, as required by the said act; and upon the execution of the said assignment, the said [*mortgagee*] paid to the said [*mortgagor*] the sum of £—— (*f*). NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, and particularly in consideration of

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the said [*mortgagee*], his executors, administrators, and assigns, in the penal sum of £——, conditioned for the payment of the sum of £——, and interest thereon, at the rate of £5 per centum per annum, from the date of the said bond, on the —— day of —— then next and now past. AND WHEREAS the said [*surety*] executed the said bond as surety for the said [*mortgagor*]. AND WHEREAS the whole of the principal sum of £—— secured by the hereinbefore-recited bond is now owing to the said [*mortgagor*], but all interest thereon hath been paid to the day of the date of these presents. AND WHEREAS the said [*mortgagee*] having called upon and requested the said [*mortgagor*] to give him further security for the payment of the said principal sum of ——, and the interest to accrue thereon, the said [*mortgagor*] proposed and agreed to execute to him an assignment, by way of mortgage, of the said shares in the —— Canal Navigation, in manner hereinafter contained. AND WHEREAS the said [*mortgagor*] hath accordingly," &c., *ut supra.*

Of canal shares.

(*e*) Acts of Parliament incorporating canal and railway companies generally prescribe the form of the transfer, and require it to be registered in the office of the company. As to mortgages of canal shares, stock, &c., *vide ante*, Vol. 5, p. 398.

Variation where mortgage is of stock.

(*f*) "AND WHEREAS the said [*mortgagor*] hath accordingly executed and delivered to the said [*mortgagee*] a deed-poll, or letter of attorney, bearing even date with these presents, duly authorizing the transfer of the said £1,000, £3 per cent. Consolidated Annuities, into the name of the said [*mortgagee*], in the said books at the Bank of England; And upon the execution of the said letter of attorney, the said [*mortgagee*] paid," &c., *ut supra.*

49. OF CANAL SHARES.

the sum of £—— (*g*), so paid by the said [*mortgagee*] to the said [*mortgagor*] as hereinbefore recited, the receipt and payment of which sum of £—— the said [*mortgagor*] doth hereby acknowledge, and from the same doth hereby absolutely discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns; *It is hereby declared and agreed by and between the said parties to these presents*, that the said [*mortgagee*], his (*h*) executors, administrators, or assigns, shall stand possessed of the (*i*) several shares in the —— Canal Navigation, so assigned to him as hereinbefore recited, *Upon the trusts*, and for the intents and purposes hereinafter expressed concerning the same, (that is to say);

Declaration that mortgagee shall stand possessed of shares upon certain trusts.

UPON TRUST for securing to the said [*mortgagee*], his executors, administrators, or assigns, the payment of the said sum of £——, on the —— day of ——, next ensuing, with interest for the same after the rate of £5 per cent. per annum, to be computed from the day of the date of these presents, clear of all deductions for taxes or on any other account whatsoever; And for that purpose, in case the said principal sum and interest, or any part of the same respectively, shall remain unpaid to the said [*mortgagee*], his executors, administrators, or assigns, after the day or time aforesaid, UPON TRUST, at any time or times thereafter, in the discretion of the said [*mortgagee*], his executors, ad-

Trust for securing mortgage-money and interest.

In default of payment, in trust for sale.

(*g*) The *ad valorem* mortgage stamp, in the present case, should be laid upon the defeazance, and not upon the statutory transfer, (*vide* Stamp Act, 55 Geo. 3, c. 184, p. 1583, *ante*, Vol. 5, p. 518), in which, herefore, the actual money consideration ought not to appear. It will e simply a transfer from the mortgagor to the mortgagee, for a nominal consideration, and upon a common deed stamp of 1*l.* 15*s.* According to the literal terms of the act, indeed, it might seem that both deeds are liable to the mortgage stamp, as all conveyances and transfers of property, redeemable by express stipulation, *or otherwise*, are expressly subjected to the duty, without any exception applicable to conveyances, which are made defeazible by a separate deed, though such deed is immediately afterwards charged with the mortgage duty. There can be no doubt, however, that the legislature intended the mortgage stamp not to apply to the conveyance in such a case, and that the act would receive this construction.

Deed how to be stamped.

(*h*) If the shares are *real* estate, say—

"heirs or assigns,"

Variations.

(*i*) "£1,000, £3 per cent. Consolidated Annuities, so transferred to him," &c. *ut supra*.

49. OF CANAL SHARES.

ministrators, or assigns, (without the necessity of any consent or concurrence on the part of the said [*mortgagor*], his (*k*) executors, administrators, or assigns), to make sale and absolutely dispose of the (*l*) —— shares in the —— Canal Navigation so assigned to the said [*mortgagee*] as aforesaid, or any of them, either together or separately, and either by public auction or by private contract; with power to purchase in the same at any auction, and also to vary the terms of or rescind any contract for sale, which may have been entered into; and to transfer or assure the same when sold unto the purchaser or purchasers thereof, or as he, she, or they shall order or direct; *And upon further trust*, out of the money which shall arise, as well from the sale or sales aforesaid, as from any of the dividends and profits of the said (*l*) shares accruing in the meantime, which may be received by the said [*mortgagee*], his executors, administrators, or assigns, to pay or retain the said principal sum of £——, with interest for the same after the rate and from the time aforesaid, or so much of the said sum and interest as shall then remain unpaid, clear of all deductions as aforesaid, together with such costs and expenses as shall be incurred by the said [*mortgagee*], his executors, administrators, or assigns, in the execution of these trusts, or as incidental thereto; And in case, after paying or retaining the sum or sums of money and interest, costs, and expenses aforesaid, any surplus shall remain in the hands of the said [*mortgagee*], his (*k*) executors, administrators, or assigns, unapplied to any of the purposes aforesaid, Then, *Upon trust*, to pay such surplus unto the said [*mortgagor*], his executors, administrators, or assigns, for his or their absolute use and benefit: *And also* in case, after such payment of the sum or sums of money and interest, costs, and expenses aforesaid, or after the receipt of the same from the said [*mortgagor*], his executors, administrators, or assigns, the said (*m*) —— shares in the —— Canal Navigation, or any of them, shall remain unsold, Then, UPON TRUST, on the request and at the costs of the said [*mortgagor*], his execu-

Application of proceeds of sale.

Variations.

(*k*) If the shares are real estate, say—"heirs or assigns,"

(*l*) "£3 per cent. Consolidated Annuities, so transferred,"

(*m*) "£3 per cent. Consolidated Annuities, or any part thereof,"

tors, administrators, or assigns, to transfer the same unto the said [*mortgagor*], his (*n*) executors, administrators, or assigns, or as he or they shall direct, free from all incumbrances created or occasioned by the said [*mortgagee*], his (*n*) executors, administrators, or assigns, in the meantime. (*Indemnities to purchasers; Covenant by mortgagor to pay principal and interest; and for title and further assurance*) (*o*). AND (*p*) the said [*mortgagee*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagor*], his executors and administrators, that, until default shall be made by the said [*mortgagor*], his heirs, executors, or administrators,

Covenant by mortgagee not to sell until default;

(*n*) If the shares are real estate, say—"his heirs or assigns,"

(*o*) An agreement by a creditor to give time to his principal debtor, it is well known, discharges the surety. (*Vide ante*, Vol. 3, p. 195, 2nd ed.) It is proper, therefore, whenever a further security is taken for a debt to which a third person is liable as surety, to introduce a clause to the following effect: and although the deed contains no express agreement for time (its object being simply to give the creditor an additional security), the clause should be inserted in order to prevent any question being raised as to its incidental operation upon the surety's liability—

Surety discharged by giving time to principal.

"PROVIDED ALWAYS, and it is hereby agreed and declared, that nothing herein contained shall extend, or be construed to extend, to suspend, or in any manner interfere with or affect the remedies or claims which the said [*mortgagee*] now hath, or which the said [*mortgagee*], his executors, or administrators, may hereafter have, against the said [*mortgagor*] or [*surety*], or either of them, their or his heirs, executors or administrators, by virtue of the hereinbefore-recited bond, it being the intention of the said parties to these presents, that the said [*mortgagor*] and [*surety*], and each of them, their and his heirs, executors, and administrators, shall remain liable to the immediate payment of the principal sum and interest secured by the said bond, in the same manner, to all intents and purposes, as if these presents had not been made, any rule of law or equity to the contrary notwithstanding."

Proviso that remedies against the surety shall not be affected.

(*p*) The ordinary declaration, that the mortgagor shall receive, &c., is not applicable to the present case, because the mortgagor cannot receive the dividends while the canal shares or stock stand in the name of the mortgagee.

49. OF CANAL SHARES.

in payment of the said principal sum of £—— and interest at the day or time and in the manner hereinbefore appointed for payment thereof, he the said [*mortgagee*], his executors or administrators, will not sell or dispose of the (*q*) —— shares in the —— Canal Navigation so transferred to him as aforesaid, and will from time to time pay over unto the said [*mortgagor*], his executors or administrators, any dividend or dividends which he the said [*mortgagee*], his executors or administrators, shall in the meantime have received on account thereof. IN WITNESS &c.

and to pay over dividends.

(*q*) "£1,000, £3 per cent. Consolidated Annuities."

50. OF A BOND DEBT.

50. ASSIGNMENT *of a* BOND DEBT *by* WAY *of* MORTGAGE. (*Variation where the Security is for Part of an existing Debt* (*a*); *also where Assignment is absolute upon Trusts to* RECEIVE *and apply* MONEY *instanter; also, where it is of* SEVERAL *Debts described in a* SCHEDULE). (*A short Form*).

THIS INDENTURE, made the —— day of ——, 18—,

Parties.

BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part.

Recital of bond.

WHEREAS, by a certain bond or obligation, bearing date on or about the —— day of —— last, under the hand and seal of [*obligor*], of &c., the said [*obligor*] became bound unto the said [*mortgagor*] in the penal sum of £——, conditioned for the payment unto the said [*mortgagor*], his executors or administrators, of the sum of £——, and interest thereon at the rate of £5 per centum per annum from the day of the date thereof,

Suggestion as to stamp.

(*a*) Where the value of the security is considerably less than the sum to be secured, it is better to limit it to a specific sum, adequate to the actual value of the security, in order to avoid subjecting the deed to an *ad valorem* stamp on the whole. Perhaps, however, it is not quite clear in this case that such duty attaches, having regard to the case of *Warren* v. *Howe*, 3 Dowl. & R. 494, 2 Barn. & Cress. 283; but which, it is to be remembered, arose on the applicability of the *ad valorem* stamp on "Conveyances." The words of the Stamp Act applicable to conveyances and mortgages are somewhat different, though the difference applies rather to the specific than to the general terms.

50. OF A BOND DEBT.

on the —— day of —— then and now next ensuing (*b*), AND WHEREAS the said [*mortgagor*] hath contracted with the said [*mortgagee*] for the loan of the sum of £——, and, for the purpose of securing the repayment of the same, with interest, hath agreed to execute to the said [*mortgagee*] an assignment of this said bond (*c*), in manner hereinafter contained (*d*). NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— of lawful British money, lent by the said [*mortgagee*] to the said [*mortgagor*], at or immediately before the execution of these presents, the receipt whereof the said [*mortgagor*] doth hereby acknowledge, and from the same doth absolutely discharge the said [*mortgagee*], his heirs, executors, and administrators, He the said [*mortgagor*] *Hath* assigned and transferred, and by these presents *Doth* &c., unto the said [*mortgagee*], ALL THAT the hereinbefore-recited bond or obligation, and the full and whole force, benefit, and effect thereof; *And* all and every sums and sum of money now due, or hereafter to become due, either for principal or interest, by

Of agreement for loan.

Testatum.

In consideration of money lent,

mortgagor assigns bond,

and moneys thereby secured.

(*b*) If by instalments, say—

"conditioned for the payment unto &c., of the sum of £——, by four equal instalments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, (*or otherwise, as the case may be*)."

Variation, where bond is payable by instalments;

If the assignment is to embrace several debts, say—

"AND WHEREAS the several persons whose names are set forth in the schedule hereunder written, are indebted to the said [*mortgagor*] in the several sums written opposite to their respective names in the said schedule."

also, where scheduled debts are assigned.

(*c*) Or "the said several debts,"

(*d*) If the object be to secure an existing debt, say—

"AND WHEREAS the said [*mortgagor*] is indebted unto the said [*mortgagee*] in the sum of £——, and, for the purpose of securing the payment of the sum of £——, part thereof, with interest, hath proposed and agreed to execute an assignment of the said bond (*or*, "the said several debts," *as the case may be*), in manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that, for carrying the said proposal and agreement into effect, and in consideration of 10*s.*," &c.

Variation, where security is for debt antecedently due.

50. OF A BOND DEBT.

virtue or in respect of the same bond or obligation (*e*); *And* all the right, title, interest, claim, and demand, both at law and in equity, of the said [*mortgagor*] in or to the same bond or obligation, sums and sum of money respectively; To HAVE and receive the said (*f*) bond or obligation, sums and sum of money, and other the premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors or administrators, to and for his and their own use absolutely for ever; *Subject, nevertheless,* to the proviso for redemption hereinafter contained (*g*): AND the said [*mortgagor*] doth hereby absolutely and irrevocably constitute and appoint the said [*mortgagee*], his executors, or administrators, the true and lawful attorney and attorneys of him the said [*mortgagor*], his executors or administrators, for him or them, and in his or their name or names or otherwise, to receive, and if the said [*mortgagee*], his executors or administrators, shall deem it expedient so to do, to sue for and recover the said moneys hereby assigned; and when the same or any part thereof shall be received, to give valid acquittances and discharges for the same, which shall exonerate the person or persons paying the said moneys from all responsibility in respect of the application thereof (*h*), and generally to perform all acts

Habendum.

Power of attorney.

Variation, where assignment is of scheduled debts.

(*e*) "All and singular the debts or sums of money particularised in the schedule hereunder written; and the interest, if any, now due, and which shall hereafter become due thereon respectively; and all and singular the bills, bonds, notes, or other securities for the payment of the said sums of money respectively;"

(*f*) "several debts or sums of money,"

(*g*) If there is no proviso for redemption, but the assignment is upon certain trusts, instead of these words, say—

"upon the trusts hereinafter contained,"

As to giving a mortgagee power to compound for the debt.

(*h*) Sometimes it may be convenient, in the assignment of a debt by way of mortgage, to give the mortgagee a power to compound or accept any composition or security for the payment. Such a power, however, should be given with caution, and, perhaps, can scarcely ever be reasonably required, unless the mortgagor's absence from the kingdom will prevent him from concurring in any such arrangement. If this power is given, the following addition may be made to the letter of attorney:—

Authority to

"And also, if the said [*mortgagee*], his executors, admini-

whatsoever which shall be requisite, in order to give complete effect to the assignment hereby made, and to appoint a substitute or substitutes for all or any of the purposes aforesaid, and such substitution at pleasure to revoke, the said [*mortgagor*] hereby ratifying and confirming, and agreeing to ratify and confirm, whatsoever his said attorney or attorneys, or his or their substitute or substitutes, shall lawfully do in the premises (*i*): PROVIDED ALWAYS, and it

50. OF A BOND DEBT.

Proviso for redemption.

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strators, or assigns, shall think proper so to do, to compound for the debt hereby assigned, or any part thereof, by the acceptance of a part in discharge of the whole, or to join in and execute any letter of license to the said [*debtor*] in respect of the same; or in any other manner to agree to postpone the payment thereof; and also to submit any dispute respecting the said debt to arbitration, in such manner as he or they shall think proper."

mortgagee to compound, &c.

(*i*) Where a bond, or other debt, not yet payable, is assigned as a security, it seems in general to be advisable to name a day in the proviso for redemption earlier than that at which the assigned debt will become due; otherwise, the terms of the proviso should be, that the mortgagee shall re-assign, in case the debt shall not have been previously received by him. Where the debt assigned is actually due at the time of the mortgage, it seems to be better to frame the deed as an immediate assignment, upon trust, to receive and apply the debt, without a proviso for redemption. The trusts (omitting the proviso for redemption) will then be as follow:—

Distinction where the debt assigned is *due*, and where *not*.

"AND *it is hereby declared and agreed* that the said [*mortgagee*], his executors, administrators, and assigns, shall stand possessed of all and every the sums and sum of money which shall or may be received by him or them by virtue of these presents, *Upon the trusts* following, that is to say; *Upon trust*, in the first place, to reimburse himself and themselves the costs and charges (if any) attending the receipt or recovery thereof, and otherwise arising in the execution of these present trusts; and, in the next place, *Upon trust*, to retain and satisfy unto him the said [*mortgagee*], his executors, administrators, and assigns, the principal sum of £—— hereby intended to be secured, and interest thereon at the rate of £5 per centum per annum from the day of the date of these presents, or so much of the said principal and interest moneys as shall then be due and owing by virtue thereof; And after payment and full satisfaction of the said

Trust to receive and apply debt *instanter*.

50. OF A BOND DEBT.

is hereby declared and agreed, that if the said [*mortgagor*], his heirs, executors, or administrators, shall pay unto the said [*mortgagee*], his executors, or administrators, the sum of £——, and interest at the rate of £5 per cent. per annum, from the day of the date hereof, at the Royal Exchange, in the city of London, on the —— day of —— next, between the hours of twelve at noon and two in the afternoon, without any deduction or abatement whatsoever, then these presents, and every thing herein contained, shall cease and be void, anything hereinbefore contained to the contrary notwithstanding. AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors and administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, will pay unto the said [*mortgagee*], his executors or administrators, the sum of £——, and interest thereon at the rate of £5 per cent. per annum from the day of the date hereof, at the Royal Exchange, in the City of London, on the —— day of —— next, between the hours of twelve at noon and two in the afternoon, without any deduction or abatement whatsoever (*j*); *And that* the bond or obligation hereby assigned, or intended so to be, is now a good and valid bond for the sum of £—— and interest thereby secured as aforesaid, and is not vacated, or in any manner rendered void or voidable; *And that* there is now justly owing to him the said [*mortgagor*] the principal sum of £——, and interest thereon as aforesaid, upon or by virtue of the same bond (*k*); *And also*, that he the said [*mortgagor*],

Covenant by mortgagor to pay principal and interest.

That bond is valid.

That principal and interest are owing thereon.

Not to revoke power, &c.;

Variations.

costs and charges, principal and interest moneys, *Upon trust*, to pay the balance or residue of the said moneys which shall come to the hands of the said [*mortgagee*], his executors, administrators, or assigns, by virtue of these presents, unto the said [*mortgagor*], his executors, administrators, or assigns, for his or their own use and benefit."

Sometimes it is proper, in the assignment of a debt, to make it saleable by the mortgagee, in case of non-payment of the mortgage-moneys. (See a trust of this nature, *ante*, p. 141).

(*j*) As to assignments of debts by way of security, *vide ante*, Vol. 5, p. 294.

(*k*) Or "that the several debts or sums of money hereby respectively assigned, or intended so to be, are now actually due and owing to the said [*mortgagor*];"

50. OF A BOND DEBT.

his executors or administrators, will not at any time hereafter revoke the power or authority hereinbefore contained, nor receive, compound for, or discharge the moneys hereby assigned, or any part thereof, nor release or interfere with any action or suit which shall or may be commenced in his, their, or either of their name or names, in pursuance of these presents, for the recovery of the same, without the consent in writing of the said [*mortgagee*], his executors, administrators, or assigns; but will at all times avow, justify, and confirm all such matters and things, process, and proceedings, as he the said [*mortgagee*], his executors, administrators, or assigns, or any other person or persons, by or through his or their direction or procurement, shall, in pursuance of the power hereinbefore contained, do, commence, bring, or prosecute, upon or by reason or means of the said (*l*) bond or obligation, and premises; *And further*, that he the said [*mortgagor*], his executors and administrators, will, at all times hereafter, at his or their own costs and charges, at the request of the said [*mortgagee*], his executors, administrators, or assigns, make, do, and execute, all such further acts, deeds, matters, and things, for the more effectually assigning and assuring unto the said [*mortgagee*], his executors, administrators, and assigns, the above-recited (*l*) bond or obligation, and enabling him or them to receive and recover the principal-money and interest already due, and hereafter to grow due thereon, upon the trusts aforesaid, be the same by assignment, letter of attorney, or otherwise howsoever, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably required; PROVIDED ALWAYS, and it is hereby declared and agreed, that the said [*mortgagee*], his executors, administrators, or assigns, shall not be obliged to apply for or bring any action or actions, or pursue or adopt any legal or equitable remedies or proceedings whatsoever, to enforce the payment of the sum or sums of money secured by the bond or obligation (*m*) hereby assigned, or intended so to be, *when and as soon as the same moneys shall become due and payable* (*n*); nor shall he or

and for further assurance.

Mortgagee not to be obliged to sue.

(*l*) "debts and sums of money," Variations.

(*m*) "for the recovery of the said debts or sums of money,"

(*n*) If the bond is already due, the words in italics should be omitted.

50. OF A BOND DEBT.

they incur any responsibility by omitting or neglecting so to do, [unless and until he or they shall have received notice in writing from the said [*mortgagor*], his executors, or administrators, calling upon him or them to make such application, or pursue or adopt such remedies or proceedings as aforesaid. *Provided nevertheless*, and it is hereby further declared, that such notice shall not be requisite for the purpose of authorizing the institution of any such proceedings as aforesaid on the part of the said [*mortgagee*], his executors, administrators, or assigns, in case he or they shall think proper to have recourse thereto (*o*)]. IN WITNESS &c.

Remarks upon the clause in the text.

(*o*) This clause may be added or not, according to the intention. There would be no ground for it, if the mortgagee were bound to receive his money immediately on tender, as it would then be always in the power of the mortgagor to take the remedies into his own hands, by paying the mortgage debt; but, as the mortgagee is entitled to six months' notice, it is possible that he may refuse both to receive his own debt on the one hand, and to proceed against the mortgagor's debtor on the other. Perhaps it would be better to confine the obligation to sue upon notice in such a case. As the proviso now stands, a mortgagee would probably object to it. The following addition might then be made to the clause :—

"Provided also, and it is hereby further declared, that it shall not be incumbent on the said [*mortgagee*], his executors, administrators, or assigns, to adopt and pursue such remedies and proceedings as aforesaid, if he or they shall object so to do, and shall consent thereupon to receive the principal and interest moneys due and owing to him or them upon or by virtue of these presents, and re-assign and deliver over the said bond to the said [*mortgagor*], his executors, administrators, or assigns."

SCHEDULE REFERRED TO IN THE PRECEDING INDENTURE.

SCHEDULE.

Amount of Debt.	*From whom due.*
£50 : 10*s*.....	A. B. of No. —— in the Strand, Middlesex.
£100 and interest from ..	C. D. of Stanmore, Middlesex.

51. ASSIGNMENT *of* POLICY *of* ASSURANCE *for* LIFE(*a*) *to secure Money Lent, and Interest.* (*Variation where Money is collaterally secured by a* BOND; *Also where the Mortgage is to cover* FUTURE ADVANCES). 51. OF POLICY OF LIFE INSURANCE.

THIS INDENTURE, &c., BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. WHEREAS the said [*mortgagor*] has, by a certain policy of assurance or instrument in writing, bearing date on or about the —— day of ——, effected an assurance on his life, with the Society for Equitable Assurances on Lives and Survivorships, in the sum of £3,000. AND WHEREAS the said [*mortgagor*] hath applied to and requested the said [*mortgagee*] to lend him the sum of £1,000 at interest, upon the security of the said policy, and the covenant of the said [*mortgagor*] hereinafter contained, which the said [*mortgagee*], hath agreed to do (*b*). NOW THIS INDENTURE

Parties.

Recital that mortgagor has insured his life for 3,000*l.*

That mortgagee has agreed to lend him 1,000*l.*

Testatum:

(*a*) As to securities on policies of life-insurance, *vide ante*, Vol. 5, p. 302.

(*b*) The recital in this draft stood as follows: it has been altered in conformity to the suggestion, *ante*, Vol. 5, p. 515.

"AND WHEREAS the said [*mortgagor*] hath applied to and requested the said [*mortgagee*], to lend him the sum of £1,000, which he the said [*mortgagee*] hath agreed to do, upon having the re-payment thereof, with interest, secured by the bond of the said [*mortgagor*], and upon having the said sum of £1,000 further secured to the said [*mortgagee*], his executors, administrators, and assigns, by a transfer to him and them, by way of mortgage, of the policy of assurance for the said sum of £3,000, so granted on the life of the said [*mortgagor*], as aforesaid. AND WHEREAS, in pursuance of the above-recited agreement, the said [*mortgagor*], by his certain bond or obligation in writing, bearing even date with these presents, has become bound unto the said [*mortgagee*], his executors, administrators, and assigns, in the sum of £——, with a condition thereunder written for

Variation where mortgage is accompanied by a bond.

Recital of bond.

51. OF POLICY OF LIFE INSURANCE.

WITNESSETH, that, in pursuance of the above-recited agreement, and also in consideration of the sum of £1,000 of lawful British money, paid and advanced by the said [*mortgagee*] to the said [*mortgagor*], at or before the sealing and delivery of these presents, the receipt whereof the said [*mortgagor*] doth hereby acknowledge, and from the same doth acquit, release, and discharge the said [*mortgagee*], his executors, administrators, and assigns; And for further securing the payment of the said sum of £1,000 (*c*), with the interest thereon, he the said [*mortgagor*] *Hath* granted, bargained, sold, assigned, transferred, and set over, and by these presents *Doth* &c., unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT, the herein-before-recited policy of assurance, bearing date on or about the —— day of ——, by which the payment of the said sum of £3,000 is assured by the said society for equitable assurances on lives and survivorships, to the executors, administrators, or assigns of the said [*mortgagor*], on his decease, in the manner in the said policy mentioned, And the full benefit and advantage thereof; *And* all and every sums and sum of money which shall or may become due or be recoverable upon or by virtue of the said policy of assurance; *And* all the right, title, interest, property, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in, to, or out of the same; TO HAVE, RECEIVE, and take the said policy of assurance, sums and sum of money, and premises unto the said [*mortgagee*], his executors, administrators, and assigns, henceforth, for his and their own use and benefit absolutely (*d*). *In trust nevertheless*,

Transfer of policy,

and all sums of money recoverable thereupon;

and all the right, &c.

Habendum unto mortgagee absolutely;

in trust as a pledge for 1,000*l.* and interest.

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making the same void on payment by the said [*mortgagor*], his heirs, executors, or administrators, with the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £——, with interest for the same after the rate of £5 for every £100 for a year, on the —— day of —— now next ensuing the date hereof, or upon the decease of the said [*mortgagor*], which shall first happen.

(*c*) If the mortgage is also to secure sums *to be* advanced, say—

"and such other sum and sums of money as hereinafter mentioned."

(*d*) If the security is to extend to future advances, the trusts may be varied as follows—

as a pledge or security to him the said [*mortgagee*], his executors, administrators, or assigns, for the re-payment to

51. OF POLICY OF LIFE INSURANCE.

" *Upon the trusts,* nevertheless, and for the intents and purposes hereinafter expressed (that is to say), UPON TRUST, in the first place, by, with, and out of the sums and sum of money hereby assigned, or intended so to be, to retain and satisfy himself and themselves, the said [*mortgagee*], his executors, administrators, or assigns, respectively, the said sum of £—— now advanced and lent by him as aforesaid, and interest thereon from the date of these presents, at the rate of £5 per centum per annum, or so much of the said principal sum and interest as shall not have been previously paid by the said [*mortgagor*], his heirs, executors, or administrators; And also all and every the sums or sum of money (not exceeding, in the whole, with the said sum of £——, the principal sum of £——) which at any time, and from time to time hereafter, shall be advanced or lent by the said [*mortgagee*], his executors, administrators, or assigns, to the said [*mortgagor*], his executors or administrators, with interest for the same sums or sum respectively, from the times or time at which the same respectively shall have been advanced, after the rate of £5 per centum per annum, or such other rate of interest as shall be agreed upon; *And also* all costs, charges, damages, and expenses, which the said [*mortgagee*], his executors, administrators, or assigns, shall pay, incur, or sustain, in the suing for, recovering, and receiving the sums or sum of money hereby assigned, or any part thereof, or otherwise in the execution of these present trusts; and from and after the payment, satisfaction, and discharge of the said sum of £——, and the interest thereon, and the other sums or sum of money (if any) to be advanced as aforesaid, with interest as aforesaid, and of all such costs, charges, damages, and expenses as aforesaid, *Then* UPON TRUST, to pay, assign, and make over the said policy of insurance, sums and sum of money, or such part or so much of the same sums and sum of money as shall not be otherwise applied for the purposes aforesaid, unto the said [*mortgagor*], his executors, administrators, and assigns, to and for his and their own use and benefit. PROVIDED ALWAYS, and it is hereby declared and agreed, that the extension of this present security to any

Variation where the security extends to future advances.

Mortgagee not to be obliged to make further advances.

51. OF POLICY OF LIFE INSURANCE.

him or them of the sum of £1,000 so by him lent to the said [*mortgagor*], as aforesaid, with interest for the same after the rate, and at the day or time, mentioned in (*e*) the proviso hereinafter contained; and for that purpose, in case the said sum of £1,000, or any part thereof, or the interest thereon, shall remain unpaid at the time of the decease of the said [*mortgagor*], UPON TRUST, that he the said [*mortgagee*], his executors, administrators, or assigns, shall and do receive and recover all and every the sums and sum of money payable and recoverable, or to be received upon or by virtue of the said policy of assurance, and shall and do thereout pay and satisfy himself and themselves the said sum of £1,000 and interest, or so much thereof respectively as shall then remain unpaid and owing to him or them; Together with all costs, charges, and expenses which he or they shall pay or incur in and about the receipt and recovery thereof; and shall and do pay the surplus of such moneys unto the executors, administrators, or assigns of the said [*mortgagor*]. *And* for the more effectually enabling him the said [*mortgagee*], his executors, administrators, and assigns, to receive and recover the moneys and premises hereinbefore mentioned, and intended to be hereby assigned, he the said [*mortgagor*] hath made, constituted, and appointed, and by these presents *Doth*, &c., the said [*mortgagee*], his executors, administrators, and assigns, to be the true and lawful attorney or attorneys irrevocable of him the said [*mortgagor*], his executors or administrators, in the name or names of the said [*mortgagor*], his executors or

In case said 1,000*l.* and interest shall remain unpaid at the decease of mortgagor, upon trust, to receive the sums recoverable upon said policy;

and pay himself principal, interest, and costs.

Power of attorney to receive moneys due upon policy.

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sums or sum of money hereafter to be advanced by the said [*mortgagee*] his executors, administrators, or assigns, to the said [*mortgagor*], his executors or administrators, as aforesaid, shall not be construed as implying any agreement or obligation on the part of the said [*mortgagee*], his executors, administrators, or assigns, to advance the same, any rule of law or equity to the contrary notwithstanding."

This clause may prevent dispute, but is not necessary; as the mortgagee in a deed of this kind clearly contracts no such obligation as that which it is intended to negative.

If the policy is to be saleable on default of payment of the mortgage-money on a given day, or of paying the premiums from time to time, declare the trusts, *ut ante*, p. 141.

(*e*) "the condition of the above-recited bond, and"

administrators, or otherwise, to receive of and from the said Society for Equitable Assurances on Lives and Survivorships, or all or any persons or person whom it doth or may concern, the sum of £3,000, for which the life of the said [*mortgagor*] is assured as aforesaid, and all and every other sums and sum recoverable, or to be received or become payable upon or by virtue or in respect of the policy of assurance hereinbefore mentioned and intended to be hereby assigned as aforesaid (*f*); And, upon payment or receipt thereof, or of any part thereof, to give proper and effectual receipts, releases, or other discharges for the same exonerating the person or persons paying the said sums and sum of money from all responsibility in respect of the application thereof, and also from the necessity of inquiring whether the receipt thereof is consistent with the trusts herein contained; and upon non-payment thereof, or of any part thereof, (if the said [*mortgagee*], his executors, or administrators shall deem it expedient so to do), to bring, commence, and prosecute any action or actions, suit or suits, or other process at law or in equity, for the recovery of the said sums and sum of money, or any part thereof; And for all or any of the purposes aforesaid to appoint a substitute or substitutes, and such substitution from time to time at pleasure to revoke; and all and whatsoever the said attorney and attorneys, or his or their substitute or substitutes, shall lawfully do or cause to be done in and about the premises, he the said [*mortgagor*], his executors or administrators, will ratify and confirm. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that, if the said [*mortgagor*], his heirs, executors, or administrators, do and shall pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, at or in (*name place of payment*), the sum of £1,000, of lawful money, &c., with interest for the same after the

51. OF POLICY OF LIFE INSURANCE.

and give discharges.

Proviso for making void this assignment on repayment of principal and interest.

(*f*) [The letter of attorney, although it is invariably inserted in assignments of life policies, seems to be quite nugatory where the insurance is effected on the assignor's own life, inasmuch as the legal right to sue upon the policy would vest in the executors or administrators of the assignor, for whom, of course, he could not appoint an attorney. But the clause authorizing the mortgagee to give discharges, and exonerate the persons paying the money from inquiring into the propriety of the receipt of it, should be inserted whether the letter of attorney is retained or not.]

Remark as to letter of attorney.

51. OF POLICY OF LIFE INSURANCE.

rate &c., on the —— day of —— next ensuing, or upon the decease of the said [*mortgagor*], which shall first happen, without any deduction or abatement whatsoever (*g*), then and in such case, and immediately after such payment shall be so made, the assignment hereby made, and every matter, clause, and thing herein contained, shall cease, determine, and be absolutely void, to all intents and purposes whatsoever. AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his executors and administrators, in manner following, (that is to say), (*to pay principal and interest moneys*); *And that* he the said [*mortgagor*] hath not at any time heretofore made, done, executed, or suffered, and shall not nor will at any time hereafter, during the continuance of the present security, make, do, execute, or suffer, any act, matter, or thing whatsoever, by means whereof the policy of assurance hereby assigned, or intended so to be, is, can, shall, or may be avoided, impeached, forfeited, vacated, or incumbered, or by means whereof the said [*mortgagee*], his executors, administrators, or assigns, shall or may be hindered or prevented from recovering or receiving the sums or sum recoverable or to be recovered thereupon or by virtue thereof; *And that* he the said [*mortgagor*] shall and will, at his own costs and charges, from time to time, and at all times during the continuance of the security hereby, or intended to be hereby, made, regularly pay, or cause to be paid, the premiums or sums of money, and make, do, and execute, or cause to be made, done, and executed, all other acts, matters, and things which shall be necessary or proper to be paid, made, done, and executed, for keeping the said policy of assurance on foot, and shall and will in all things conform to the rules, customs, and regulations of the said Society for Equitable Assurances on lives and survivorships, so far as the same relate to the said policy of assurance, to the intent that the same may be preserved in full force,

Covenants by mortgagor;

—that mortgagor hath not done, nor will do, any act to incumber policy, or prevent mortgagee from recovering sums to grow due thereupon;

and will regularly pay premium, and conform to the rules of the insurance-office:

Variation in respect of premiums of insurance.

(*g*) "according to the condition of the above-recited bond," Adding, if any premium on the policy will become due before the day named in the proviso for redemption—

"And also, if the said [*mortgagor*], his heirs, executors, or administrators, shall duly perform the covenant hereinafter contained respecting the payment of the premiums on the said policy of assurance,"

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and that the said [*mortgagee*], his executors, administrators, and assigns, may be enabled to have and receive the full benefit and advantage thereof; And shall and will, from time to time, within seven (*h*) days after the annual premium on the said policy shall become due, deliver the receipt for the same to the said [*mortgagee*], his executors, administrators, or assigns; *And further*, that he the said [*mortgagor*] now hath in himself full power and lawful and absolute authority to transfer and assign (*i*) the said policy of assurance, sums and sum of money, and other premises hereby intended to be assigned to the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And moreover*, that he the said [*mortgagor*], his executors and administrators, shall and will, at any time or times hereafter, on the request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his executors or administrators, make, do, and execute, or cause to be made, done, and executed, every such further or other act, deed, assignment, and assurance in the law whatsoever, for the more effectually transferring and assigning the policy of assurance and premises intended to be hereby assigned unto the said [*mortgagee*], his executors, administrators, and assigns, or for enabling and empowering him or them to recover and receive the moneys intended to be hereby assigned, as by the said [*mortgagee*], his executors, administrators, or assigns, shall be reasonably advised or devised and required. AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors, administrators, and assigns, that, in case the said [*mortgagor*] shall at any time or times, whilst the said sum of £1,000, or any part thereof, or the interest thereon, shall remain owing to the said [*mortgagee*], his executors, administrators, and assigns, neglect, or refuse, or discontinue to pay the annual or other sum or sums of money payable, or to be paid, upon or in respect of the aforesaid policy of assurance, for keeping the same on foot, accordingly and comformably to the

and deliver receipts for premiums:

that mortgagor hath good right to transfer:

and for further assurance.

Covenant by mortgagor, that, in case he shall neglect to pay premium, it shall be lawful for mortgagee to pay same:

(*h*) The Offices generally allow thirty days for the payment of the premium.

(*i*) As to the advantage of the creditor's insuring in his own name, *vide ante*, Vol. 5, p. 311.

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customs, rules, and usage of the said Society for Equitable Assurances on Lives and Survivorships, or to deliver to the said [*mortgagee*], his executors, administrators, or assigns, the receipt for the premium on such policy as aforesaid; then it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to advance and pay such annual or other sums of money, as, by reason of such neglect or default, shall be requisite, according to the rules, customs, and regulations of the office aforesaid, for preserving and keeping on foot the said policy of assurance; And the said [*mortgagor*], his heirs, executors, or administrators, shall or will, on demand, repay to the said [*mortgagee*], his executors, administrators, or assigns, such sums and sum of money as shall be so advanced or paid by the said [*mortgagee*], his executors, administrators, or assigns, for the purpose of preserving and keeping on foot the aforesaid policy, together with interest for the same, after the rate aforesaid, from the respective times of his or their paying and advancing the same; And that it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to retain the same sums and sum of money, and interest, out of the sums and sum of money which upon the decease of the said [*mortgagor*] shall be payable or recoverable upon or by virtue of the aforesaid policy of assurance, in case the same sums or sum of money shall not have been paid by the said [*mortgagor*], his heirs, executors, or administrators, to the said [*mortgagee*], his executors, administrators, or assigns, pursuant to the covenant in that behalf hereinbefore contained (*k*). IN WITNESS &c.

and mortgagor will repay same with interest, on demand.

(*k*) "*Provided, nevertheless,* that the total amount of the principal moneys to be ultimately recoverable by virtue of these presents, shall not exceed the sum of £——, (*the next gradation in the scale of duties in the Stamp Act above* £1,000)."

Total amount of principal money secured should be limited.

In this draft there was no limitation in the amount of the moneys secured, and consequently the deed was liable to a duty of £25. It is clear that, without any express provision of the nature of that in the text, the mortgagee of a policy of insurance would be allowed premiums paid by him to keep on foot the policy, and interest at £4 per cent., in the same manner as the mortgagee of a leasehold property is allowed the expenses of renewals. As to which, see an observation *ante*, Vol. 5, p. 520.

MORTGAGE-BOND (*a*).

MORTGAGE BOND.

KNOW ALL MEN BY THESE PRESENTS, *That* I, [*mortgagor*], of &c., am held and firmly bound to [*mortgagee*], of &c., in the penal sum of £—— of lawful British money, to be paid to the said [*mortgagee*], his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, firmly by these presents, sealed with my seal, dated the —— day of ——, in the —— year of the reign of our Sovereign Lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and in the year of our Lord 18—.

THE CONDITION of the above-written bond or obligation is such, that, if the above-bounden [*mortgagor*], his heirs, executors, administrators, or assigns, do and shall pay or cause to be paid unto the above-named [*mortgagee*], his executors, administrators, or assigns, the sum of £—— of lawful British money, with interest for the same after the rate of £5 for every £100, by the year, on the —— day of —— now next ensuing, without any deduction or abatement whatsoever (being the same sum and interest as are secured, or are expressed to be secured, to the said [*mortgagee*], his executors, administrators, and assigns, in and by an indenture of mortgage, bearing even date herewith, and made between the said [*mortgagor*], of the one part, and the said [*mortgagee*], of the other part) (*b*): *Then* this obligation to be void, otherwise to remain in full force and virtue.

(*a*) If the *ad valorem* stamp-duty is placed upon the mortgage deed, the bond is only liable to a stamp of £1; but in order to bring the bond within the exemption, it is not sufficient that it be executed at the same time as the mortgage deed, it must *bear even date* with it. See further as to the stamps on bonds for mortgage-moneys, *ante*, Vol. 5, pp. 523, 533.

(*b*) Sometimes is added—

"And if the said [*mortgagor*], his heirs, executors, or administrators, do and shall duly perform all and singular the covenants and agreements on his or their part contained in the said indenture;"

52. REVERSIONARY INTEREST IN STOCK.

52. MORTGAGE *of a* REVERSIONARY SHARE *or Interest in* £2,000, £3 *per cent. Consols, and* £1,500, £3 *per cent. Reduced Annuities, for* SEVEN YEARS CERTAIN, *or at the Demise of the prior Cestui que Trust for Life.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. (*Recite marriage-articles, whereby* £2,000, £3 *per cent. Consols, and* £1,500, £3 *per cent. Reduced, were vested in trustees in trust for the mortgagor's mother for life, and, after her death, to her children; and that mortgagor was one of the only two children of that marriage*).

Recital of contract for loan.

AND WHEREAS the said [*mortgagor*], by virtue of the trusts contained in the above in part recited articles, being now entitled to the whole beneficial interest in reversion immediately expectant on the decease of the said [*cestui que trust for life*], his mother, of and in one undivided moiety or half part of the several sums of £2,000, £3 per centum Consolidated Annuities, and £1,500, £3 per centum Reduced Annuities, so standing in the names of the said [*trustees*] as aforesaid, and having occasion for the sum of £——, hath contracted with the said [*mortgagee*] for a loan thereof, at interest, upon the security of an assignment of the said moiety of the said annuities, in manner hereinafter mentioned.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of &c., to the said [*mortgagor*] paid by the said [*mortgagee*], at &c., the receipt &c., the

Mortgagor assigns one moiety in the several sums of stock.

said [*mortgagor*] *Hath* granted, bargained, sold, assigned, and transferred, and by these presents *Doth* &c., unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT one full and equal moiety, or half part, and all other the part or share of the said [*mortgagor*] of and in the several sums of £2,000, £3 per centum Consolidated Annuities, and £1,500, £3 per centum Reduced Annuities, so standing in the names of the said [*trustees*] as aforesaid, and the dividends, interest, and proceeds accruing there-

from, and after the decease of the said [*cestui que trust for life*], *And all* right, title, reversionary and other interest, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in, to, of, or out of the same several annuities and premises, and every or any part thereof: To HAVE, hold, perceive, receive, and take the said moiety or other the part or share hereby assigned, or intended so to be, of the said several sums of £2,000, £3 per centum Consolidated Annuities, and £1,500, £3 per centum Reduced Annuities, unto the said [*mortgagee*], his executors, administrators, and assigns, as his and their own proper money and estate for ever, to his and their own proper use and benefit; *Subject, nevertheless,* to such interest as the said [*cestui que trust for life*] hath therein for her life as aforesaid; *And also subject* to the proviso or agreement, for the redemption thereof hereinafter contained. (*Add power of attorney, if inserted, ut ante,* p. 140) (*a*). PROVIDED ALWAYS, and it is hereby declared and agreed, that if the said [*mortgagor*], his heirs, executors, or administrators, shall pay unto the said [*mortgagee*], his executors, administrators, or assigns, at or upon the —— day of —— which will be in the year ——, or upon the decease of the said [*cestui que trust for life*], which shall first happen, the full sum of £—— of lawful British money; *And also* shall and do, yearly and every year, until the said —— day of ——, or until the decease of the said [*cestui que trust for life*], which shall first happen, pay unto the said [*mortgagee*], his executors, administrators, or assigns, the yearly sum of £—— of like &c., as and for the interest of the said sum of £——, after the rate &c., by equal half-yearly payments, on the —— day &c., in every year; without any deduction whatsoever in respect of any taxes, or any other matter or thing whatsoever; *And also,* if in case the said [*cestui que trust for life*], shall depart this life before the said —— day of ——, the said [*mortgagor*], his heirs, executors, or administrators, do and shall, immediately on such decease, pay unto the said [*mortgagee*], his executors, administrators, or assigns, such a proportional part of the interest (if any) of the said principal sum as shall have accrued between the

52. REVERSIONARY INTEREST IN STOCK.

Habendum.

Letter of attorney.

Proviso for redemption.

Proportional part of interest made payable.

(*a*) A power of attorney, however, is altogether unnecessary. *Vide ante,* Vol. 5, p. 297.

52. REVERSIONARY INTEREST IN STOCK.

last of the said half-yearly days of payment, and the time of the decease of the said [*cestui que trust for life*]; Then, from and immediately after such payments so made as aforesaid, these presents, and the assignment hereby made, and the powers and authorities hereby granted, and every clause, matter, and thing herein contained, shall cease and be void (*b*). And the said [*mortgagor*] for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors and administrators, (*to pay the principal money and interest, at the several days hereinbefore appointed for payment thereof respectively, without deduction*). [*And also*, that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall not nor will at any time hereafter before the —— day of —— which will be in the year ——, or before the decease of the said [*cestui que trust for life*], which shall first happen, pay the said principal money, or any part thereof, or, by any legal or equitable means whatsoever, seek for, or endeavour to compel a redemption of the moiety, part, or share hereby assigned, or intended so to be, of the several annuities and premises aforesaid (*c*)]; *And further*, that the said [*mortgagor*], is now absolutely entitled to the moiety hereby assigned, or intended so to be, of and in the said several sums of £2,000, £3 per centum Consolidated Annuities, and £1,500, £3 per centum Reduced Annuities, immediately expectant on the decease of the said [*cestui que trust for life*] as aforesaid, and has full power to assign and transfer the same in manner aforesaid, and according to the true intent and meaning of these presents; *And also*, that the said [*mortgagor*], his executors or administrators, shall not, at any time hereafter, without the consent in writing of the said [*mortgagee*], his executors, administrators, or assigns, release or discharge the said moiety, or other the share hereby assigned, of and in the said annuities and premises; [(*c*) *And moreover*, that, after default shall have been made by the said [*mortgagor*], his heirs, executors, or administrators, in payment of the said sum of £—— or any part thereof, or in any part of

Covenant by mortgagor not to pay off mortgage for a certain period.

That he has power to assign.

That, after default, trustees shall stand possessed in trust for mortgagee.

(*b*) If mortgagee is to have a power of sale, in default of payment, proceed *ut ante*, p. 141.

(*c*) Both these clauses are superfluous, and may be properly omitted.

52. REVERSIONARY INTEREST IN STOCK.

the interest for the same, on any one of the days or times hereinbefore appointed for payment thereof, then the trustees for the time being of the hereinbefore recited marriage articles shall stand and be possessed of and interested in the said moiety, and other the part or share hereby assigned, or intended so to be, of the said annuities and premises, subject to the interest of the said [*cestui que trust for life*] therein for life, *In trust* for the use and benefit of the said [*mortgagee*], his executors, administrators, or assigns; and, from and after the decease of the said [*cestui que trust for life*], shall and will transfer the same accordingly, without any denial or interruption by the said [*mortgagor*], his executors, administrators, or assigns, or any other person or persons whomsoever; *And that* free and clear from and of all charges and incumbrances whatsoever]; *And likewise* that the said [*mortgagor*], his executors and administrators, and all other persons claiming any right, title, charge, or interest, in or to the said moiety, or other the part or share hereby assigned, or intended so to be, of and in the said annuities and premises (other than and except the said [*cestui que trust for life*]), shall and will [*continue covenant for further assurance, ut ante,* p. 143).

And for further assurance.

Mortgagee's receipts to discharge trustees transferring fund.

PROVIDED ALWAYS, and it is hereby declared, that the trustees or trustee for the time being of the hereinbefore-recited marriage articles, transferring to the said [*mortgagee*], his executors, administrators, or assigns, the said moiety, or other the part or share hereby assigned, or intended so to be, of and in the said annuities and premises, by virtue of these presents, shall be exonerated from all responsibility in respect of the application thereof; and such trustees or trustee shall not be bound to inquire whether such transfer is consistent with the due execution of the trusts hereinbefore contained. *And it is further* declared, that he the said [*mortgagee*], his executors, administrators, or assigns, shall not incur any responsibility by reason of his or their neglect or delay to call for the transfer of the said moiety, or other the part or share hereby assigned, or intended so to be, of and in the said annuities and premises, on the decease of the said [*cestui que trust for life*], or to institute proceedings in any court of equity to enforce the same; any rule of law or equity to the contrary thereof notwithstanding. IN WITNESS &c.

Mortgagee not to be liable for loss occasioned by delay to sue.

53. ASSIGNMENT OF JUDGMENT.

53. ASSIGNMENT *of* JUDGMENT (*a*). (*Variation where made by an Assignee, and not the original Judgment-Creditor*) (*b*).

THIS INDENTURE, made the —— day of ——, 18—,
Parties. BETWEEN [*mortgagor*], of &c., of the one part; and *mortgagee*], of &c., of the other part.
Recital of bond. WHEREAS, by a certain bond or obligation in writing, bearing date on or about the —— day of —— the Right Honourable A. B., of —— Square, in the county of Middlesex, commonly called Lord ——, became held and firmly bound unto the said [*mortgagor*], his executors, administrators, or assigns, in the sum of £——, with a condition thereunder written, for making void the same upon payment by the said [*debtor*], his heirs, executors, or administrators, unto the said [*mortgagor*], his executors, administrators, or assigns, of the full sum of £——, of lawful British money, together with interest for the same at the rate of £5 per cent. per annum, on the —— day of —— then and now next ensuing: AND WHEREAS the
Of judgment obtained in an action against the debtor. said [*mortgagor*] did on the —— day of —— last, obtain judgment in her Majesty's Court of Exchequer in Ireland (*c*), against the said [*debtor*], in an action of debt upon the said bond, for the sum of £—— late Irish currency (*d*), making

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(*a*) As to the assignment of satisfied judgments, and whether they can protect against incumbrances, *vide ante*, Vol. 5, p. 452.

(*b*) The principle of these variations is, of course, applicable to assignments generally of bond-debts and other legal *choses en action*.

Assignee of Irish judgment may sue in his own name, when. (*c*) The assignee of a judgment in Ireland is enabled, by certain statutes, to sue in his own name; but this is confined to judgments *confessed*, (see *O'Callaghan* v. *Marchioness Thomond*, 3 Taunt. 82); in assignments of which, therefore, a letter of attorney to use the name of the assignor, (*ut post*, p. 266), is unnecessary.

As to Irish currency. (*d*) One hundred pounds British currency was equal to 108*l.* 6*s.* 8*d.* Irish currency, but the two currencies are now assimilated.

£—— British currency, debt and costs of suit (*e*) (*f*). AND WHEREAS no part of the principal and interest moneys secured by the hereinbefore-recited bond (*g*) has been paid or satisfied (*h*). AND WHEREAS the said [*mortgagor*] has applied to and requested the said [*mortgagee*] to lend him the sum of £——, at interest, upon the security of the above-recited judgment, and the covenant of the said [*mortgagor*] hereinafter contained, which the said [*mortgagee*] has agreed to do. NOW THIS INDENTURE WITNESSETH, that, in consideration &c., the said [*mortgagor*] *Hath* granted, bargained, sold, assigned, and transferred, and by these presents *Doth* grant, bargain, sell, assign, and transfer, unto the said [*mortgagee*], his executors, admini-

53. ASSIGNMENT OF JUDGMENT.

Agreement for loan.

Testatum.

Mortgagor assigns.

(*e*) If the judgment was entered up by virtue of a warrant of attorney in England, say—

"AND WHEREAS, by a certain deed poll, or warrant of attorney, bearing date on or about the —— day of —— last, the Right Honourable [*debtor*] &c. did authorize and empower certain attorneys therein named to enter up judgment against him in her Majesty's Court of Exchequer at Westminster, in an action of debt at the suit of the said [*mortgagor*], for the sum of £——, for money borrowed, besides costs of suit; and it was declared in and by the defeazance written under the said warrant of attorney, that the same was given to secure to the said [*mortgagor*], his executors or administrators the payment of the principal sum of £——, and interest thereon at the rate of £5 per centum per annum, on the —— day of —— then and now next ensuing. AND WHEREAS judgment was entered up against the said [*debtor*], by virtue of the said warrant of attorney, on the —— day of —— last."

Variation where judgment is entered up on a warrant of attorney.

(*f*) If the assignor be himself an assignee, recite the deed of assignment, and the power of attorney, including the power to appoint a substitute.

(*g*) "warrant of attorney."

(*h*) Or, if the fact be so—

"AND WHEREAS there is now due and owing to the said [*mortgagor*], upon the above-recited bond, (*or*, warrant of attorney, *as the case may be*), the said principal sum of £——, all interest thereon having been paid up to the day of the date of these presents."

Where principal only is due.

53. ASSIGNMENT OF JUDGMENT.

strators and assigns, ALL THAT the said judgment-debt, or sum of £——, and all and every sums and sum of money now due, and hereafter to grow due by virtue thereof, for principal, interest, and costs; and also the said judgment, and all other the securities for the said debt, and the full and whole benefit and advantage thereof; TO HAVE, HOLD, TAKE, RECEIVE, and enjoy the judgment-debt and premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, henceforth, to his and their own proper use, benefit, and behoof, as his and their proper goods and chattels for ever. AND for the purpose of enabling the said [*mortgagee*], his executors or administrators, to receive and enforce the payment of the judgment-debt and premises hereby assigned, the said [*mortgagor*] doth make, constitute, and appoint the said [*mortgagee*], his executors, or administrators, the true and lawful attorney and attorneys irrevocable of him the said [*mortgagor*], in the name or names, and at the proper costs and charges, of the said [*mortgagor*], his executors or administrators, or otherwise, to ask, demand, and receive, of and from the said [*debtor*], his executors or administrators, the judgment-debt and premises hereby assigned, and, on non-payment of the same, or any part thereof, to obtain any execution or executions, or bring, commence, and prosecute any action or actions, suit or suits, as well at law as in equity, for the recovery of the same, and to use all such other lawful remedies, ways, and means, as he the said [*mortgagor*], his executors or administrators, could or might have used or taken for the recovery of the same; And on receipt or recovery thereof, or of any part thereof, to sign and give a good and effectual receipt or receipts for the same; with full power from time to time to appoint a substitute or substitutes for all or any of the purposes aforesaid (*i*). And he the said [*mortgagor*], doth hereby further

judgment.

Habendum.

Power of attorney.

Utility of power to appoint substitutes.

(*i*) This power ought never to be omitted, because, if the assignee should assign the judgment, as the rule is *delegatus non potest delegare*, he cannot authorize his assignee to obtain execution, &c., under the power given to himself; and it is understood that the Court of King's Bench has actually set aside an execution obtained by the sub-assignee, where it has been proved to have been taken out without the assent of the original assignee, he alone being the attorney of the original creditor; for the Court cannot look at the deed as an assignment, (a *chose en action* not being assignable by law), but only as constituting the

agree to ratify and confirm whatsoever the said [*mortgagee*], his executors or administrators, or his or their substitutes, shall lawfully do, or cause to be done, in or about the pre-

53. ASSIGNMENT OF JUDGMENT.

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assignee the attorney of the creditor, and if the assignment contain no power to the assignee to appoint a substitute, the second assignee can never sustain this character. In such a case, the only course is, to induce the original assignor to join in the second assignment for the purpose of appointing the assignee under that deed his attorney, instead of the original assignee. Where the assignment is made by a person who is himself an assignee, the power should also extend to authorize the assignee to bring actions on the covenants contained in the assignor's deed of assignment; the form of the power will then be as follows:—

Junction of the original judgment-creditor, where necessary.

"And, for the considerations aforesaid, the said [*mortgagor*] doth hereby absolutely and irrevocably constitute and appoint the said [*mortgagee*], his executors or administrators, to be the substitute or substitutes of him the said [*mortgagor*], his executors or administrators, for him or them, and in his or their name or names, or in the name or names, and as the attorney and attorneys of the said [*original assignor*], his executors or administrators, to receive, and, if necessary, sue for and recover the judgment-debt and premises hereby assigned, or intended so to be; and generally to perform and execute all the matters and things for which the said [*mortgagor*] is authorized to appoint a substitute in and by the hereinbefore-recited power of attorney, or otherwise*. And the said [*mortgagor*] doth further absolutely and irrevocably constitute and appoint the said [*mortgagee*], his executors and administrators, his and their attorney and attorneys, in the name or names, and at the costs of the said [*mortgagor*], his executors, administrators, or assigns, or otherwise, to bring any action or actions at law, or suit or suits in equity, upon or by virtue of the covenants entered into by the said [*original assignor*] with the said [*mortgagor*], his executors or administrators, in and by the hereinbefore-recited indenture of assignment, or any or either of them, and to release or discharge the same actions or suits, and generally to do and perform all such acts, matters, and things as shall be requisite and necessary in order that the said [*mortgagee*], his executors or admini-

Power of attorney where assignor is himself an assignee.

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* If there is no power to appoint a substitute, of course the preceding clause must be omitted.

53. ASSIGNMENT OF JUDGMENT.

Usual trusts and covenants.

mises, by virtue of the power hereinbefore in that behalf given. (*Declaration that mortgagee shall stand possessed of moneys upon trusts, ut ante, p.* 134; *that he shall not incur any responsibility by neglecting to issue execution, or take any other proceedings upon the judgment, ut ante, p.* 249; *covenants by mortgagor to pay principal money and interest; that debt is due; that he has right to assign; will not revoke power; and for further assurance, ut ante, p.* 257). IN WITNESS &c. (*k*).

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strators, shall derive the full benefit of the assignment hereby made. (*Add power to appoint a substitute, and agreement to ratify, ut ante, p.* 247, *n*)."

Whether an assignment of a judgment requires a mortgage stamp.

(*k*) An assignment of a judgment to a purchaser has been held not to be a "conveyance" of "property," so as to be subject to the stamp attaching upon "conveyances." (*Warren* v. *Howe*, 3 Dowl. & Ryl. 494; 2 Barn. & Cress. 281). It should seem that the exemption would apply to mortgages, in describing which the same words occur. (*Vide* extract from Stamp Act, 55 Geo. 3, c. 184, *ante*, Vol. 5, p. 518). In point of fact, the deed in the case referred to (as elsewhere remarked, *vide post*, Vol. 9, p. 316, 1st edit.) appears to have been really a mortgage. In the present case, therefore, a common deed stamp would be sufficient.

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54. OF A LEGACY OR SHARE OF RESIDUE.

54. MORTGAGE *by* ASSIGNMENT *of a* PECUNIARY LEGACY. (VARIATION *where the Mortgage is of an* UNDIVIDED SHARE *in* GENERAL PERSONAL ESTATE; *Also, where it is of a* FUND *in* COURT; *Also, where there is a* TRUST *for* SALE *in default of Payment*).

Parties.

Recital of will bequeathing legacy.

THIS INDENTURE, made this —— day of ——, BETWEEN [*mortgagor*], of &c. of the one part; and [*mortgagee*], of &c., of the other part. WHEREAS [*testator*], of ——, deceased, the father of the said [*mortgagor*], by his last will and testament in writing, bearing date on or about the —— day of ——, bequeathed unto each of his children the sum of £1,000, to be payable when the youngest of such children should attain the age of twenty-

54. OF A LEGACY OR SHARE OF RESIDUE.

one years (*a*), and appointed [*executors*], executors of his said will. AND WHEREAS the said [*testator*] departed this life on the —— day of ——, without revoking or altering his said will, which was duly proved by the said [*executors*], on the —— day of ——, in the Prerogative Court of the Archbishop of Canterbury (*b*). AND WHEREAS the said [*mortgagor*] attained his age of twenty-one years on the —— day of ——; but the youngest child of the said testator has not yet attained that age, being of the age of ten years, or thereabouts (*c*). AND WHEREAS the said [*mortgagee*] has agreed to lend the said [*mortgagor*] the sum of £300, at interest, on the security of his said legacy. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £300 of lawful British money, paid and advanced by the said [*mortgagee*] to the said [*mortgagor*], at or immediately before the execution of these presents, the receipt whereof the said [*mortgagor*] doth hereby acknowledge, and therefrom doth absolutely discharge the said [*mortgagee*], his executors, administra-

Death of testator, &c.

Testatum.

Mortgagor, in consideration of money advanced, assigns—

(*a*) Or "bequeathed unto [*trustees*], all his personal estate whatsoever and wheresoever, *Upon trust*, to pay the income thereof to his wife, [*wife*], during her natural life, and, at her decease, to divide the same personal estate equally between his children, share and share alike, for their respective absolute use and benefit."

Variation where the assignment is of a share of personal estate.

(*b*) "AND WHEREAS the said [*wife*], the widow of the said [*testator*], the testator is yet living. AND WHEREAS the said testator left four children living at his decease, and the said [*mortgagor*] is one of such children."

(*c*) If a suit in Chancery has been instituted for carrying into effect the trusts of the testator's will, in which a decree has been made, say—"AND WHEREAS, by a decree or decretal order of the High Court of Chancery, bearing date the —— day of ——, made by his Honor the Vice-Chancellor in a cause wherein A. B. and others are plaintiffs, and the said [*executors*] are defendants: (*recite the introductory part of the decree*), It was ordered, that the trusts of the said testator's will should be established and carried into execution, and that it should be referred to the Master to inquire" (*state the terms of the order, and the subsequent proceedings, if any, before the Master*).

Variation where a suit in Chancery has been instituted for carrying into execution the trusts of the will.

54. OF A LEGACY OR SHARE OF RESIDUE.

tors, and assigns, He the said [*mortgagor*] *Hath* granted, bargained, sold, and assigned, and by these presents *Doth* &c. unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT the legacy or sum of £1,000 so bequeathed to him the said [*mortgagor*], in and by the hereinbefore-recited will of his father the said [*testator*], deceased, as aforesaid, and all and every sums and sum of money to become due and payable in respect of the same legacy; And all the right &c., (*ut ante, p.* 261 (*d*) (*e*)): To HAVE AND RECEIVE the said legacy (*f*) and other the premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, to and for his and their own use, absolutely for ever (*g*),

legacy.

Habendum.

(*d*) "ALL THAT one undivided fourth part or share of him the said [*mortgagor*], and all other his part and share of and in the personal estate of the said [*testator*], deceased, given and bequeathed in and by his hereinbefore-recited will, and all and every sums, &c.

Or share of residue.

(*e*) Add, if the assignment is of a fund in Court—

"And all and every such sums or sum of money as shall be payable to or recoverable by the said [*mortgagor*], under or by virtue of the hereinbefore-recited decree, or otherwise in the hereinbefore-mentioned suit."

(*f*) "undivided part or share,"

(*g*) If the legacy is assigned upon trust for sale, proceed as follows—

Variation where legacy is assigned upon trust for sale.

"*Upon the trusts*, and for the intents and purposes hereinafter declared concerning the same, (that is to say), UPON TRUST, that, if the said [*mortgagor*], his executors, administrators, or assigns, do and shall, on the —— day of —— now next ensuing, at &c., pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of £—— of lawful British money, with interest for the same after the rate of £5 for every £100 by the year, without any deduction or abatement whatsoever; [*adding, if so intended,* 'And also such further and other sum and sums of money as the said [*mortgagee*], his executors or administrators, may hereafter advance or lend to the said [*mortgagor*], his executors, administrators, or assigns, with interest thereon at the rate aforesaid, from the time or respective times of advancing the same, (but so nevertheless that the whole of the principal moneys included in the present security shall not

In case mortgagor shall pay principal and interest on a certain day;

54. OF A LEGACY OR SHARE OF RESIDUE.

Subject, nevertheless, to the proviso or agreement for redemption hereinafter contained (*h*). (*Proviso for redemption,*

exceed the sum of £——)'], Then that the said [*mortgagee*], his executors, administrators, or assigns, shall and will, on the request and at the cost of the said [*mortgagor*], his executors, administrators, or assigns, re-assign and re-assure the legacy (*or* 'undivided part or share,' *as the case may be*) and premises hereby assigned, or intended so to be, unto the said [*mortgagor*], his executors, administrators, or assigns, free from all incumbrances created by the said [*mortgagee*], his executors, administrators, or assigns, in the meantime. But, in case default shall be made in payment of the said principal sum [or sums] and interest, or any part thereof,

Upon trust to re-assign.

In default of payment upon trust to sell.

(*h*) If the assignment is of a fund in Court, proceed as follows:—

"AND the said [*mortgagor*] hereby absolutely and irrevocably constitutes and appoints the said [*mortgagee*], his executors or administrators, to be the true and lawful attorney and attorneys of the said [*mortgagor*], his executors or administrators, for him or them, and in his or their name or names, to nominate and authorize any barrister or barristers at law to appear for the said [*mortgagor*], his executors or administrators, in the hereinbefore-mentioned suit in the said Court of Chancery, and consent and submit to any motion or petition, motions or petitions, which shall or may be made or presented by the said [*mortgagee*], his executors, administrators, or assigns, to the said Court, either for the purpose of preventing the payment or transfer of the moneys and premises hereby assigned, or intended so to be, to any person or persons other than the said [*mortgagee*], his executors, administrators, or assigns, without due notice thereof to him or them*, or for the purpose of obtaining the payment and transfer of the said moneys and premises to the said [*mortgagee*], his executors or administrators." (*With power to appoint substitutes and agreement to ratify*).

Variation where the assignment is of a fund in Court.

As to the course to be pursued by an assignee of a fund in Court, *vide ante*, Vol. 5, p. 297.

* This is all the Court will do, while the fund continues reversionary.

54. OF A LEGACY OR SHARE OF RESIDUE.

ut ante, p. 255). And the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors, administra-

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at the time and in the manner hereinbefore provided for payment of the same, Then, UPON TRUST, that he the said [*mortgagee*], his executors, administrators, or assigns, do and shall, and he or they are hereby authorized and required, of his or their own proper authority, without any further consent or concurrence of the said [*mortgagor*], his executors or administrators, to make sale and absolutely dispose of the legacy or sum of £——, (*or* 'undivided part or share,' *as the case may be*), and premises hereby assigned, or intended so to be, either by public auction or private contract, and under and subject to such conditions and stipulations as he or they shall think proper, with liberty to buy in the same at any auction or auctions, if it shall be deemed expedient so to do, and vary the terms of and wholly rescind any contract for sale which shall or may have been entered into, and assign and assure the same when sold to the purchaser or purchasers thereof, or as he, she, or they shall direct;

Application of proceeds of sale.

And UPON TRUST, out of the proceeds of such sale, to retain to himself and themselves the said [*mortgagee*], his executors, administrators, or assigns, the principal moneys and interest hereby intended to be secured, which shall then be due and owing to him and them, and all costs and expenses attending the execution of these present trusts; And as to the residue or surplus (if any) of the proceeds of the said sale, after such payments and deductions as aforesaid, to pay the same unto the said [*mortgagor*], his executors, administrators, or assigns, for his and their own use and benefit: AND *it is hereby declared* that the receipt or receipts of the said [*mortgagee*], his executors, administrators, or assigns, for any sum or sums of money to be received by him or them in the execution of the trusts hereinbefore contained, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof, and such person or persons shall not be obliged to inquire whether the receipt of the same moneys is consistent with the due execution of the said trusts, nor be affected by express notice that such receipt is inconsistent therewith, and improper."

Indemnity to purchasers and others.

tors, and assigns (*to pay principal and interest*); and that the legacy or sum of £1,000 hereby assigned, or intended so to be, is now absolutely owing to the said [*mortgagor*], according to the tenor and effect of the above-recited will, and that no part thereof hath been received, released, assigned, or incumbered by the said [*mortgagor*]; and that he the said [*mortgagor*] now hath in himself good right and absolute authority to assign the same legacy in manner aforesaid, according to the true intent and meaning of these presents; (*That he will not receive or release legacy; and for further assurance, ut ante*, p. 257. *Declaration that it shall not be incumbent on mortgagee to sue, ut ante*, p. 263). In witness &c.

54. of a legacy or share of residue.

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55. MORTGAGE *by* Bill *of* Sale *of a* Ship (*a*), *by a* Sole Owner. (*Variation where the Mortgagor is* Part Owner *only*).

55. bill of sale of a ship.

This indenture, made the —— day of ——, in the year of our Lord 18—, Between [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. Whereas the said [*mortgagor*] is the sole owner or proprietor of (*b*) a certain ship or vessel called the ——, of the burthen of —— tons, now on her voyage to —— (*c*), whereof —— is master. And whereas the said ship or vessel hath been duly registered pursuant to act of Parliament, and the certificate of the registry thereof is in the words or to the effect following, (that is to say), "In pursuance of an act passed in the" &c. (*Copy certificate of registry verbatim.*) And whereas the said [*mortgagee*] hath agreed to lend to the said [*mort-*

Parties.

(*a*) In preparing mortgages of ships, the great caution requisite is to ascertain that the regulations of the registry acts have been complied with; as to which, *vide ante*, Vol. 5, p. 312.

As to mortgages of ships.

(*b*) Where the mortgagor is part owner, say—
"is the owner of eight undivided sixty-fourth parts or shares of and in"

(*c*) Or, "now in the port of ——,"

55. BILL OF SALE OF A SHIP.

gagor] the sum of £——, at interest, on the security of(*d*) the said ship or vessel, and the covenant of the said [*mortgagor*] hereinafter contained. NOW THIS INDENTURE

Testatum.

WITNESSETH, that, in consideration of the sum of £—— of lawful British money, paid by the said [*mortgagee*] to the said [*mortgagor*] at or immediately before the execution of these presents, the receipt whereof the said [*mortgagor*] doth hereby acknowledge, and of and from the same doth release and discharge the said [*mortgagee*], his executors and administrators; He the said [*mortgagor*] *Hath* granted, bargained, and sold, and by these presents *doth* grant, &c., unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT the said ship or vessel(*e*), called the ——, of or belonging to the port of ——, whereof —— is master, now on a voyage from —— aforesaid to ——, together with all and singular the masts, sails, sail-yards, rigging, ropes, cord, tackle, anchors, cables, boats, oars, furniture, appendages, and appurtenances whatsoever to the said ship or vessel belonging or in anywise appertaining: *And all* the right, title, interest, trust, possession, property, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagor*], in, of, or to the ship or vessel(*f*) hereby assigned, or intended so to be. TO HAVE AND TO HOLD the said(*g*) ship or vessel, and all and singular other the premises hereby assigned, or intended so to be, unto and by the said [*mortgagee*], his executors, administrators, and assigns, absolutely, to and for his and their own proper use and benefit; *Subject, nevertheless,* to the proviso or agreement for redemption hereinafter contained, (that is to say), PROVIDED ALWAYS, and it is hereby declared and agreed, that if the said [*mortgagor*], his heirs, executors, or administrators, shall pay unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of £——, with interest for the same at the rate &c., on the &c., then these presents, and every matter and thing herein contained, shall absolutely cease and be void, any thing

Mortgagor, in consideration of money advanced, bargains, &c.

General words.

Habendum.

Proviso for redemption.

Variation where mortgage is of shares only.

(*d*) " his said parts or shares of and in "

(*e*) Or, " ALL THOSE eight undivided sixty-fourth parts or shares of him the said [*mortgagor*] of and in ALL THAT &c."

(*f*) " parts or shares,"

(*g*) " parts or shares of and in the said "

55. BILL OF SALE OF A SHIP.

hereinbefore contained to the contrary notwithstanding (*h*). AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*mortgagee*], his executors and administrators, in manner following, (that is to say), (*to pay principal and interest*); And that he the said [*mortgagor*] is now rightfully and absolutely possessed of and entitled to the ship or vessel and premises hereby assigned, or intended so to be (*i*); *And that* he the said [*mortgagor*] now hath in himself full power, and lawful and absolute authority, to grant, bargain, sell, and assure the same unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And that* the said [*mortgagee*], his executors, administrators, and assigns, shall and may from time to time and at all times after default shall have been made in payment of the said principal sum of £—— and the interest thereon, or of any part thereof respectively, at the day or time hereinbefore appointed for the payment thereof, peaceably and quietly have, hold, possess, and enjoy the said ship or vessel, and all and singular the premises hereby assigned (*k*), or intended so to be, to and for his and their own use and benefit, without any manner of hinderance, interruption, molestation, claim, or demand whatsoever, of, from, or by the said [*mortgagor*], or any person or persons whomsoever; *And that* free and clear, and freely and absolutely released and discharged, or otherwise, by and at the costs of the said [*mortgagor*], his executors or administrators, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges, and incumbrances whatsoever; *And moreover*, that he the said [*mortgagor*], his executors and administrators, and all and every persons and person whosoever, claiming or to claim any right, title, or interest in or to the ship or vessel

Covenant for insurance.

Covenant by mortgagor that he is lawfully possessed, &c.

For quiet enjoyment after default;

free from incumbrances;

and for further assurance.

(*h*) Add trusts for sale in default of payment, if intended, *ut ante*, p. 270.

(*i*) " the parts or shares hereby assigned, or intended so to be, of and in the said ship or vessel;" Variation where shares only are assigned.

(*k*) " the parts or shares hereby assigned, or intended so to be, of and in the said ship or vessel,"

55. BILL OF SALE OF A SHIP.

and premises hereby assigned, or intended so to be (*l*), shall and will from time to time and at all times hereafter, upon every request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his executors or administrators (*m*), make, do, and execute, or cause and procure to be made, done, and executed, all such further acts, deeds, and assurances whatsoever, for the more effectually assigning and assuring the said (*n*) ship or vessel and premises unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised and required. PROVIDED ALWAYS, and it is hereby declared and agreed, that, until default shall be made by the said [*mortgagor*], his executors or administrators, in payment of the said principal sum of £—— and interest, or some part thereof respectively, on or at the day or time hereinbefore appointed for payment thereof, it shall be lawful for the said [*mortgagor*], his executors or administrators, peaceably to hold and enjoy the ship or vessel hereby assigned, or intended so to be (*o*), for his and their own use and benefit, without any interruption by the said [*mortgagee*], his executors or administrators, or any person or persons claiming or to claim through or under him or them, any thing hereinbefore contained to the contrary notwithstanding. IN WITNESS &c.

Proviso for quiet enjoyment by mortgagor until default.

Variations.

(*l*) "the parts or shares hereby assigned, or intended so to be, of and in the said ship or vessel,"

(*m*) If a power of sale is added, say—

"until a sale shall be made under the trust hereinbefore contained, and afterwards, at the costs and charges of the purchaser or purchasers, his, her, or their executors, administrators, or assigns,"

(*n*) "parts or shares of and in the said"

(*o*) "parts or shares hereby assigned of and in the said ship or vessel,"

56. BILL OF SALE *of* GOODS *and* CHATTELS, *in the Mortgagor's Dwelling-house. Declaration that Mortgagee may sell after Default. Covenant by Mortgagee not to sue until Default. Special Provision as to Notice.*

56. BILL OF SALE OF GOODS.

THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., of the one part; and [*mortgagee*], of &c., of the other part. WHEREAS there is due and owing from the said [*mortgagor*] to the said [*mortgagee*], for goods sold and delivered by him to the said [*mortgagor*], the sum of £200, as he the said [*mortgagor*] doth hereby admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that, in consideration of the covenant hereinafter contained on the part of the said [*mortgagee*], and for better securing to him the payment of the said sum of £200 and interest thereon, as hereinafter mentioned, He the said [*mortgagor*] *Hath* bargained, sold, and assigned, and by these presents *Doth* bargain, sell, and assign, unto the said [*mortgagee*], his executors, administrators, and assigns, ALL AND EVERY the goods, utensils, implements, and things, which are now in, about, and belonging to the dwelling-house, out-houses, and estate, of the said [*mortgagor*], situate and being in —— Street, in the parish of ——, in the county of ——, now in his occupation, and which are hereinafter particularly mentioned, enumerated, and described, (that is to say); in the dwelling-house (*describe the articles*) (*a*); AND all the right, title, interest, property, claim, and demand of the said [*mortgagor*] in and to the said goods, chattels, and premises, and every part and parcel thereof: TO HAVE, TAKE, RECEIVE,

Parties.

Recital of subsisting debt.

Testatum.

For the purpose of securing debt and interest, mortgagor assigns to mortgagee

goods, utensils, &c., about his dwelling-house.

Habendum to mortgagee;

(*a*) If the articles are enumerated in a schedule, say— "and which are particularly mentioned, enumerated, and described in the schedule hereinunder written:"

As to enumerating articles of furniture, &c.

But an enumeration of the articles in any manner is not absolutely requisite, (see *Jarman* v. *Woolloton*, 3 D. & E. 618); and, where they are very numerous, is often inconvenient. All that is required is, that the goods should be so designated as to be capable of being identified; for this purpose, it is sufficient that they are described as the goods in a certain house; and the question, what articles formed part of the goods so described, if raised, must be settled by extrinsic evidence.

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AND ENJOY the goods, chattels, and premises hereby assigned or expressed and intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, as his and their own property and effects. PROVIDED NEVERTHELESS, that in case the said [*mortgagor*], his executors or administrators, shall well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £200 on the —— day of —— in the year ——, or at such earlier day or time as the said [*mortgagee*], his executors, administrators, or assigns, shall appoint for the payment thereof, in and by a notice in writing, to be given to the said [*mortgagor*], his executors or administrators, or left at his or their last or usual place of abode, at least three calendar months before the day or time so to be appointed for payment as aforesaid (*b*); and do and shall in the meantime, until the re-payment of the said principal sum of £—— at either of the periods aforesaid, well and truly pay, or cause to be paid, unto the said [*mortgagee*], his executors, administrators, or assigns, interest thereon at the rate of £7 (*c*) per centum per annum, by equal half-yearly payments, on the —— day of —— and the —— day of ——, in every year; and also a proportional part of such interest for the fractional period of a half-year (if any) which shall elapse between the last half-yearly day of payment, and the

Subject to redemption.

Reasons for special mode of framing proviso for redemption.

(*b*) This proviso is thus specially framed to prevent the mortgage from becoming absolute, so long as possible, consistently with the object of the parties; for, if the proviso were in the ordinary terms for payment of principal and interest on a certain day, and the mortgagor should (as he usually does) retain possession after that day, as such possession would be inconsistent with the deed, the assignment would, it is conceived, be void against an execution creditor. (*Vide ante*, Vol. 5, p. 244). With this view, also, it is subsequently provided that the mortgagor shall enjoy until default of payment of principal and interest, according to the proviso, *and as to the interest, until notice, vide post*, p. 279; otherwise the non-payment of the interest on any one of the days of payment would render the mortgage absolute, and make it essential to the validity of the security, for the purposes in question at least, that the mortgagee should take possession. It will be remembered, however, that none of these precautions protect the transaction from the bankrupt and insolvent acts. *Vide ante*, Vol. 5, p. 248.

Recent enactment as to usury.

(*c*) [The provisions of the statute 7 Will. 4 & 1 Vict. c. 80, stated *ante*, Vol. 5, p. 394, (which was limited to expire on the 1st of Jan. 1840), have been extended by the statute 2 & 3 Vict. c. 37, to *all loans* of more than £10, *not being loans upon the security of any interest in real property whether freehold or chattel.*

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expiration of the notice so to be given by the said [*mortgagee*], his executors, administrators, or assigns, for the payment of the said principal sum of £200 as aforesaid, such proportional part to be paid immediately on the expiration of such notice, and such several payments aforesaid to be made without any deduction or abatement whatsoever; Then, and in such case, these presents, and every article, clause, and thing herein contained, shall cease, determine, and be absolutely void, anything hereinbefore contained to the contrary notwithstanding; (*Add, if so intended, cove-*

Declaration.

Sect. 1 enacts, "That from and after the passing of this act no bill of exchange or promissory note made payable *at or within twelve months after the date thereof*, or *not having more than twelve months to run* (*a*), nor *any contract for the loan or forbearance of money, above the sum of* £10 *sterling*, shall, by reason of any interest taken thereon or *secured* thereby, or any agreement to pay or receive or allow interest in discounting, negotiating, or transferring any *such* bill of exchange or promissory note, be void, nor shall the liability of any party to any such bill of exchange or promissory note, nor the liability of any person borrowing any sum of money as aforesaid, be affected, by reason of any statute or law in force for the prevention of usury; nor shall any person or persons, or body corporate, drawing, accepting, indorsing, or signing any *such* bill or note, or lending or advancing or forbearing any money as aforesaid, or taking more than the present rate of legal interest, in Great Britain and Ireland respectively, for the loan or forbearance of money as aforesaid, be subject to any penalties under any statute or law relating to usury, or any other penalty or forfeiture; any thing in any law or statute relating to usury, or any other law whatsoever in force in any part of the United Kingdom, to the contrary notwithstanding: *Provided always, that nothing herein contained shall extend to the loan or forbearance of any money upon security of any lands, tenements, or hereditaments, or any estate or interest therein.*

Bills of exchange and contracts for loans or forbearance of money above 10*l.*, not to be affected by usury laws.

Exception of loans on real securities.

Sect. 2. "That nothing in this act contained shall be construed to enable any person or persons to claim, in any court of law or equity, more than £5 per cent. interest on any account or on any contract or engagement, notwithstanding they may be relieved from the penalties against usury, unless it shall appear to the court that any different rate of interest was agreed to between the parties.

Five per cent. to be considered the legal maximum rate of interest, except by special contract.

Sect. 3. "That nothing herein contained shall extend or be construed to extend to repeal or affect any statute relating to pawnbrokers, but that all laws touching and concerning pawnbrokers shall remain in full force and effect, to all intents and purposes whatsoever, as if this act had not been passed.

Not to affect the law as to pawnbrokers.

Sect. 4. "That this act shall continue in force until the 1st January, 1842."

Continuance of act.

(*a*) This particular reference to bills of exchange and promissory notes is necessary, in order to exempt bills and notes for a less amount than £10 from the usury laws; the subsequent exemption of contracts for the loan or forbearance of money being confined (in order to leave the pawnbroking acts untouched) to sums exceeding £10.

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nant by mortgagor to pay principal and interest); AND *it is hereby also declared and agreed*, that, after default shall be made by the said [*mortgagor*], his executors or administrators, in payment of the said sum of £200 and interest, or any part thereof, contrary to the tenor and effect of the before-mentioned proviso, and in respect of the said interest, after notice shall have been given by the said [*mortgagee*], his executors, administrators, or assigns, to the said [*mortgagor*], his executors or administrators, or left for him or them at his or their usual place or places of abode, requiring the payment of such interest, then, and in such case, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, peaceably and quietly to receive and take into his and their possession, and thenceforth to hold and enjoy all and every the goods, chattels, and premises hereby assigned, or intended so to be; *And also* to sell and dispose of the same, and every part thereof, for such price or prices as can be reasonably had or gotten for the same; And to receive and take the moneys to arise by such sale thereof, and thereby and therewith, in the first place, to retain to and reimburse himself and themselves, the said [*mortgagee*], his executors, administrators, or assigns, all costs, charges, and expenses, which he or they may incur or be put unto in and about making any such sale or sales, and also in and about the receipt and recovery of the said sum of £200 and interest respectively; and, in the next place, to retain to and reimburse himself and themselves the said [*mortgagee*], his executors, administrators, or assigns, the said sum of £200, and the interest thereon, or so much and such part thereof as shall then remain unpaid and unsatisfied; and from and after full payment and satisfaction of such costs, charges, and expenses, sum and sums of money, as aforesaid, to render to, and account for, the surplus (if any) of the money arising from such sale or sales as aforesaid, unto the said [*mortgagor*], his executors, administrators, or assigns; AND *it is hereby declared and agreed*, that, until default shall be made in payment of the said principal sum of £200, at the day or time hereinbefore appointed for payment thereof, contrary to the tenor and effect of the proviso hereinbefore contained; or until default shall be made in payment of the interest of the said principal sum, or some part thereof, on some or one of the days or times hereinbefore appointed for payment thereof, contrary to the same proviso; and until, in respect of the said interest, notice shall be given

that mortgagee may enjoy after default;

and proceed to sale.

Application of proceeds of sale.

Agreement for quiet enjoyment by mortgagor until default.

56. BILL OF SALE OF GOODS.

by the said [*mortgagee*], his executors, administrators, or assigns, unto the said [*mortgagor*], his executors or administrators, or left for him or them at his or their usual place or places of abode, requiring the payment of such interest (*e*); it shall be lawful for the said [*mortgagor*], his executors or administrators, to hold, make use of, and possess the goods, chattels, and premises hereby assigned, or intended so to be, without any manner of hinderance or disturbance of or by him the said [*mortgagee*], his executors, administrators or assigns. AND LASTLY (*f*), the said [*mortgagee*], in consideration of the premises, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*mortgagor*], his executors and administrators, that he the said [*mortgagee*], his executors or administrators, shall not nor will, until default shall be made in payment of the said sum of £200 and interest, or some part thereof, on some one of the days or times limited for payment thereof, in and by the proviso for redemption hereinbefore contained, bring or institute any action, suit, or process against the said [*mortgagor*], his executors or administrators, for recovery of the said debt or any part thereof. IN WITNESS &c.

Covenant by mortgagee not to sue until default.

(*e*) *Vide ante*, p. 182.

(*f*) This covenant on the part of the mortgagee supposes that, under the other clauses of the present deed, or some collateral obligation, the mortgagor was liable to pay the debt at an earlier period, and it is only requisite under such circumstances.

57. ASSIGNMENT *of* LETTERS PATENT, *by way of* MORTGAGE, *for securing* £—— *and Interest. Covenant to assign any New Patent for Improvements on the Invention.* (VARIATION *where the Assignment is subject to a Prior Mortgage; Also, where the Object of the Deed is to secure the Payment of a* PROMISSORY NOTE, *and with a* TRUST FOR SALE *after default*) (*a*).

57. OF LETTERS PATENT.

THIS INDENTURE, made the —— day of ——, in the year of our Lord ——, BETWEEN [*mortgagor*], of &c., Parties.

(*a*) These variations, of course, are applicable to the mortgage of any other species of property.

57. OF LETTERS PATENT.

of the one part; and [*mortgagee*], of &c., of the other part. WHEREAS, by letters patent, under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster, on or about the —— day of ——, in the —— year of the reign of her present Majesty Queen Victoria, reciting &c. (*Set forth the terms of the Patent.*) AND WHEREAS the said [*mortgagor*] hath particularly described and ascertained the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and on or about the —— day of —— last past duly enrolled in her Majesty's High Court of Chancery, pursuant to the proviso contained in the said letters patent (*b*). AND WHEREAS the said [*mortgagee*] hath agreed to advance and lend to the said [*mortgagor*] the sum of £——, at interest, on the security hereinafter expressed (*c*). NOW THIS INDENTURE WITNESSETH,

Recital of letters patent;

of enrolment of specification;

of agreement for loan.

Testatum.

(*b*) It should be ascertained that this has been done within the time required by the patent. If the specification fail to describe the invention with proper accuracy or explicitness, the patent is void. It is obvious that property of this nature is very ineligible as a security.

Specification should be duly enrolled.

(*c*) If the object of the present deed is to secure the payment of a promissory note by an assignment of the patent, recite the prior mortgage, and then proceed as follows—

"AND WHEREAS, by a promissory note, under the hand of the said [*mortgagor*], dated the —— day of —— last, the said [*mortgagor*] did promise to pay unto the said [*mortgagee*], or his order, at his office, No. —, —— Court, London, the sum of £——, six months after date. AND WHEREAS the said promissory note was given by the said [*mortgagor*], to the said [*mortgagee*] in consideration of various sums of money advanced by the said [*mortgagee*] to the said [*mortgagor*], amounting, together with interest computed to the time of the maturity of the said note, to the said sum of £——, as the said [*mortgagor*] doth hereby acknowledge. AND WHEREAS it hath been agreed between the said parties, that, for further securing the payment of the said sum of £——, the said letters patent, and all benefit thereof, shall be assigned (subject to the security so made to the said [*prior mortgagee*] as aforesaid) unto the said [*mortgagee*], upon the trusts hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that, in performance of the said agreement, and for further and more effectually securing unto the said

Variation where the security is for payment of a promissory note.

Testatum.

that, in pursuance of the said agreement, and also in consideration of the sum of £—— of lawful British money, to the said [*mortgagor*] advanced and lent by the said [*mortgagee*], at or immediately before the sealing and delivery of these presents, the receipt of which said sum the said [*mortgagor*] doth hereby acknowledge, and from the same doth discharge the said [*mortgagee*], his executors, administrators, and assigns, by these presents, he the said [*mortgagor*], *Hath* granted, assigned, and transferred, and by these presents *Doth* &c., unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THOSE the hereinbefore in part recited letters patent, and the exclusive exercise, right, and enjoyment of the invention therein mentioned, and thereby granted to the said [*mortgagor*], his executors, administrators, and assigns, as aforesaid, for the said term of fourteen years, and all and singular the liberties, privileges, profits, emoluments, and advantages whatsoever, appertaining or belonging thereunto, or in anywise to be had or made therefrom; AND all the right, title, interest, term of years unexpired, property, claim, and demand whatsoever, at law and in equity, of him the said [*mortgagor*], of, in, to, out of, and upon the letters patent and premises hereby assigned, or intended so to be: TO HAVE, HOLD, EXERCISE, AND ENJOY the said letters patent and premises, privileges, and authorities thereto belonging, and also all and singular other the premises hereinbefore expressed to be hereby assigned unto the said [*mortgagee*], his executors, administrators, and assigns, henceforth, during all the residue now unexpired of the term of fourteen years in and by the said letters patent granted, and for all other the term and interest (if any) of the said [*mortgagor*] therein, [in as full and beneficial a manner, to all intents and purposes, as he the said [*mortgagor*] might or could have held or enjoyed the same, if these presents had not been made] (*d*), but *subject, nevertheless,* to the proviso or agree-

All the right, &c.

Habendum.

[*mortgagee*], his executors, administrators, and assigns, the payment of the aforesaid sum of £—— and interest, and in consideration of 5*s.* &c., the said [*mortgagor*] *Hath* granted," &c.

(*d*) If the object of the present deed be as suggested *supra,* proceed from this place as follows—

Upon the trusts, nevertheless, and for the intents and purposes hereinafter declared concerning the same, (that is to say), UPON TRUST to permit the said [*mortgagor*], his exe-

Trust for sale.

57. OF LETTERS PATENT.

ment for redemption hereinafter contained, that is to say, PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said [*mortgagor*], his heirs, executors, or administrators, shall pay, or cause to be paid, unto the said

Proviso for redemption.

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cutors, administrators, and assigns, to receive and take the profits and advantages of the said letters patent and premises until the above-recited promissory note shall become due and payable; And UPON FURTHER TRUST, that, in case the said sum of £—— thereby secured as aforesaid, or any part thereof, shall not be paid when and as the said promissory note shall become due and payable, he the said [*mortgagee*], his executors, administrators, and assigns, shall and do, at any time or times thereafter, and without any further or other authority or direction from or by the said [*mortgagor*], his executors, administrators, or assigns, make sale and absolutely dispose of the letters patent and premises expressed to be hereby assigned, or any part thereof, during all the residue of the said term of fourteen years, and all other the term and interest then unexpired therein, either by public sale or auction, or by private contract, and either subject to or discharged from the payment of the said sum of £—— owing to the said [*prior mortgagee*] by virtue of his said recited mortgage as aforesaid, with liberty to buy in the premises at any auction or auctions, and re-sell the same, without being liable to any loss to be occasioned thereby; and shall and do make and execute all such assurances as shall be requisite to effectuate and complete such sale or sales as aforesaid, and shall and do, by and out of the moneys to arise from or be produced by such sale or sales, in the first place, pay and satisfy the costs and expenses of preparing for and making such sale or sales as aforesaid, or otherwise attending the execution of the trusts hereby created; And, in the next place, shall and do, with and out of the moneys to arise by such sale or sales as aforesaid, pay unto the said [*prior mortgagee*], his executors, administrators, and assigns, (unless the said sale and assignment, as aforesaid, shall be made subject to his said mortgage-debt), the said principal sum of £——, owing to him as aforesaid, or so much thereof as shall be then due and owing to him or them, together with the interest which shall be then due in respect thereof; And, in the next place, shall and do, with and out of the moneys to arise as aforesaid, retain unto himself and themselves, the said [*mortgagee*],

Power to sell by auction, and buy in, &c.

Application of moneys arising from sale.

[*mortgagee*], his executors, administrators, or assigns, at or in the common dining-hill of Lincoln's Inn, in the said county of Middlesex, the full sum of £—— of lawful British money, with interest thereon after the rate of £5

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his executors, administrators, and assigns, the said sum of £——, together with interest for the same after the rate of £5 for every £100 by the year, to be computed from the time when the aforesaid promissory note shall become due and payable; And shall and do pay the surplus (if any) of the moneys to arise or be produced by such sale or sales as aforesaid unto the said [*mortgagor*], his executors, administrators, or assigns, for his and their own use and benefit; And, subject and without prejudice to the trusts aforesaid, UPON TRUST that he the said [*mortgagee*], his executors, administrators, and assigns, shall and do stand possessed of and interested in the letters patent and premises expressed to be hereby assigned, and the profits and advantages thereof, or so much and such part of the same as shall remain unsold and undisposed of for the purposes aforesaid, IN TRUST for the said [*mortgagor*], his executors, administrators, and assigns. PROVIDED ALWAYS, *and it is hereby agreed and declared*, that, in case the said promissory note shall be duly paid when and as the same shall become due and payable, he the said [*mortgagee*], his executors, administrators, or assigns, shall, on the request and at the costs of the said [*mortgagor*], his executors, administrators, or assigns, re-assign the letters patent and premises hereinbefore expressed to be hereby assigned unto the said [*mortgagor*], his executors, administrators, or assigns, or as he or they shall direct, free from all incumbrances whatsoever made or committed by the said [*mortgagee*], his executors, administrators, or assigns, or any person or persons lawfully claiming or to claim by, from, through, or under him or them. (*Declaration that the receipt of mortgagee shall be a good discharge, and sales shall be binding, &c.*) *And* the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*mortgagee*], his executors, administrators, and assigns, in manner following, (that is to say), That he the said [*mortgagor*], his heirs, executors, or administrators, shall and will pay or cause to be paid unto the said [*mortgagee*], his executors, administrators, or assigns, the full and

Subject to trusts aforesaid, in trust for mortgagor.

Covenant by mortgagor to pay promissory note.

57. OF LETTERS PATENT.

for every £100 by the year, on the —— day of —— now next ensuing, free from taxes, and without any deduction or abatement whatsoever, Then, and in such case, he the said [*mortgagee*], his executors, administrators, and assigns, will, at the request and at the costs and charges of the said [*mortgagor*], his executors or administrators, assign and assure the said letters patent, and all other the premises hereby assigned, or intended so to be, unto the said [*mortgagor*], his executors, administrators, or assigns, or as he or they shall direct, free from all incumbrances, made or executed by the said [*mortgagee*], his executors, administrators, or assigns, or any person or persons claiming through or under him or them. *And* the said [*mortgagor*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*mortgagee*], his executors, administrators, and assigns, in manner following, (that is to say), (*to pay principal and interest moneys*): *And also,* that he the said [*mortgagor*], now hath in himself full power and lawful and absolute authority to grant and assign the letters patent and premises hereby assigned, or intended so to be, unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And also,* that immediately after default shall be made in payment of all or any part of the said sum of £—— and interest, contrary to the true intent and meaning of the proviso or agreement for redemption hereinbefore contained, it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, thenceforth, during the residue of the said term of fourteen years, to use, exercise, and enjoy the said new invention or discovery in such manner as he or they shall think fit, and receive and take, for his and their own use, all profits and advantages arising from the letters patent and premises hereby assigned, or intended so to be, without interruption or disturbance of or by the said [*mortgagor*], his executors, or administrators, or any other person or persons. [*And*

Covenant by mortgagor to pay;

and has power to assign;

for quiet enjoyment after default.

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just sum of £—— of lawful British money, secured by the said promissory note as aforesaid, when and as the same shall become due and payable*."

* If it is intended to preserve the remedy upon the promissory note, this covenant should be omitted.

also (*e*), that, immediately after default shall be made in payment of all or any part of the said sum of £—— and interest, contrary to the true intent and meaning of the proviso or agreement for redemption hereinbefore contained, and thenceforth during the residue of the said term of fourteen years, the said [*mortgagee*], his executors, administrators, and assigns, shall have full power and authority to use and employ the name or names of the said [*mortgagor*], his executors or administrators, in commencing or prosecuting any action or actions, or suit or suits, at law or in equity, against any person or persons whomsoever, who shall or may at any time or times hereafter, during the continuance of the said letters patent, use, exercise, or employ the said new invention or discovery, contrary to the restriction expressed and contained in the said letters patent,

That mortgagee may use the name of mortgagor in bringing actions.

(*e*) It is apprehended that this clause is unnecessary, for the assignee might sue in his own name; otherwise the proper course would be to insert a power of attorney, authorizing him to use the name of the assignor. A covenant to the following effect is sometimes inserted, and seems to be proper—

"That the said [*mortgagor*], his executors or administrators, shall and will from time to time, so long as any principal sum or interest shall be owing to the said [*mortgagee*], his executors, administrators, or assigns, upon this security, use his and their utmost endeavours to discover and detect any infringement that shall hereafter be made, or attempted to be made, by any person or persons whomsoever, of any of the rights and privileges granted by, or incident to, the letters patent hereby assigned, or intended so to be, or any letters patent which shall hereafter be assigned to the said [*mortgagee*], his executors, administrators, or assigns, pursuant to the covenant of the said [*mortgagor*] hereinafter contained; and shall and will forthwith communicate and divulge the same, when discovered, to the said [*mortgagee*], his executors, administrators, or assigns; *And also*, that the said [*mortgagor*], his executors or administrators, shall and will render his or their utmost assistance to the said [*mortgagee*], his executors, administrators, or assigns, for the purpose of enabling him or them to protect or defend the said rights or privileges granted by or incident to the said letters patent, or to prosecute any action or proceeding against any person or persons infringing the same as aforesaid."

Covenant by mortgagor to assist in detecting infringement on patent.

57. OF LETTERS PATENT.

the said [*mortgagee*], his executors, administrators, and assigns, in such case indemnifying and saving harmless the said [*mortgagor*], his executors and administrators, from and against all costs, charges, damages, and expenses, which shall or may be occasioned by commencing or prosecuting any such action or suit.]

And for further assurance.

And, moreover, that he the said [*mortgagor*], his executors and administrators, and every other person lawfully claiming by, from, or under him, them, or any of them, shall and will, at the request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his executors or administrators, make, do, and execute, or cause to be made, done, and executed, all such further and other lawful acts, deeds, and assurances in the law whatsoever, for the more effectually assigning and assuring the letters patent and premises hereby assigned, or intended so to be, and the right, title, and interest of the said [*mortgagor*], his executors and administrators, therein, unto the said [*mortgagee*], his executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably required.

Further *testatum*:—

Covenant to assign any future patent for improvements in the invention.

AND THIS INDENTURE FURTHER WITNESSETH (*f*), that, for the consideration aforesaid, the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*mortgagee*], his executors, administrators, and assigns, that in case at any time or times hereafter, during the continuance of this security, the said invention, or any alteration or improvement therein should be secured to the said [*mortgagor*], his executors or administrators, by other letters patent, for some further term or terms, then and in every such case the said [*mortgagor*], his executors or administrators, shall and will, at the request of the said [*mortgagee*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his executors, or administrators, assign and assure unto the said [*mortgagee*], his executors, administrators, and assigns, all such letters

(*f*) This *testatum* may be added or not, according to the agreement. If the deed contains a trust for sale, such trust ought to be confined to any existing patent, and not to authorize the sale for the benefit of the present covenant.

patent so to be granted as aforesaid, and the exclusive right and enjoyment of the said invention, and the alteration or improvement thereby to be secured, and all the right, title, and interest of him the said [*mortgagor*], his executors or administrators, therein, for and during all such term and terms, time and times, as in and by such letters patent respectively shall be granted and limited; subject, nevertheless, to such and the same proviso or agreement for redemption as is hereinbefore contained of and concerning the letters patent and premises hereby assigned or intended so to be, as by the said [*mortgagee*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably required. AND *it is hereby declared and agreed*, that in the meantime, until default shall be made in payment of all or some part of the said sum of £—— and interest, contrary to the proviso or agreement for redemption hereinbefore contained, it shall be lawful for the said [*mortgagor*], his executors or administrators, to use, exercise, and enjoy the said new invention or discovery and any such improvements therein as aforesaid, in such manner as he or they shall think fit, and to receive and take for his and their own use all profits and advantages arising from the letters patent and premises hereby assigned, or intended so to be, and covenanted to be assigned as aforesaid, without any interruption whatsoever of, from, or by the said [*mortgagee*], his executors, administrators, or assigns, or any person or persons rightfully claiming by, from, under, or in trust for him or them, any thing hereinbefore contained to the contrary notwithstanding. IN WITNESS &c.

57. OF LETTERS PATENT.

Agreement for quiet enjoyment by mortgagor until default.

58. TRUST FOR SALE OF PLATE, &c.

58. DEED *to secure a* DEBT *and Interest* (*Part whereof is already secured by certain Bills of Exchange*) *by the* DEPOSIT *of* PLATE, *&c. particularized in a Schedule in* TRUST *for* SALE. COVENANT *by the* DEBTOR *to* PAY *the Remainder of the Debt on a certain Day.* COVENANT *by the* CREDITOR, *that, on the* PUNCTUAL *Payment of the* BILLS *of* EXCHANGE, *and of the* MONEYS *secured by a* CONTEMPORANEOUS MORTGAGE, *given to secure* PART *of the original Debt, he will* RELEASE *the Remainder.*

Parties.

THIS INDENTURE, made &c., BETWEEN [*mortgagor*], of &c., of the same part; and [*mortgagee*], of &c., of the other part.

Recital of existing debt.

WHEREAS the said [*mortgagor*] now stands indebted unto the said [*mortgagee*] in the sum of £1,000 of lawful British money.

Of contemporaneous mortgage made by mortgagor and his wife under a power.

AND WHEREAS, by an indenture of appointment bearing even date with these presents, and made between the said [*mortgagor*] and [*wife*], his wife, of the one part, and the said [*mortgagee*], of the other part; after reciting (among other things) that the said [*mortgagor*] and [*wife*], his wife, had applied to the said [*mortgagee*] to advance to the said [*mortgagor*] the sum of £500, which the said [*mortgagee*] had agreed to do, upon having the re-payment of the said sum of £500, with interest for the same in the meantime, secured to him in the manner hereinafter mentioned: *It is witnessed*, that, in consideration of the sum of £500 therein mentioned to be paid by the said [*mortgagee*] to the said [*mortgagor*], the said [*mortgagor*] and [*wife*], his wife, in execution of a power or authority reserved to them, as in the said indenture is particularly mentioned and set forth, did subject and charge the several lands and hereditaments therein described with the payment to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £500, with interest for the same after the rate of £5 for every £100 by the year, at the days or times and in the manner thereinafter mentioned; *And it was* by the indenture now in recital *further witnessed*, that, for the consideration aforesaid, and for further securing the

58. TRUST FOR SALE OF PLATE, &c.

payment of the said sum of £500 and interest, and in execution of the power or authority thereinbefore mentioned, they the said [*mortgagor*] and [*wife*], his wife, did limit and appoint that all and singular the hereditaments thereinbefore charged with the payment of the said sum of £500 and interest should thenceforth remain *To the use* of the said [*mortgagee*], his executors, administrators, and assigns, for the term of five thousand years, to commence from the day next before the day of the date thereof, and thenceforth next ensuing, without impeachment of waste; subject, nevertheless, to a proviso for redemption, on payment by the said [*mortgagor*] and [*wife*], his wife, or either of them, or the person or persons for the time being seised of or entitled to the said hereditaments in remainder or reversion expectant on the said term of five thousand years, to the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £500, and the sum of £25 for one year's interest for the same at the rate aforesaid, making together the sum of £525, on or at the several days or times thereinafter mentioned; that is to say, the sum of 12*l.* 10*s.*, part thereof (being half a year's interest for the said sum of £500), on the —— day of —— then next ensuing, and the sum of 512*l.* 10*s.*, residue thereof, (being the whole of the said principal sum of £500, and another half-year's interest for the same), on the —— day of —— then next following: And in the same indenture is contained a declaration, that, if the said [*mortgagor*] and [*wife*], his wife, or either of them, or the person or persons for the time being entitled as aforesaid, should pay to the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of £500 by the instalments hereinafter mentioned, (that is to say), the sum of £200, part thereof, on the —— day of ——, which will be in the year ——, the sum of £150, further part thereof, on the —— day of ——, which will be in the year ——, and the sum of £150, the residue thereof, on the —— day of ——, which will be in the year ——, and should in the meantime pay to the said [*mortgagee*], his executors, administrators, or assigns, interest for the said principal sum of £500, or for such part thereof as should for the time being remain owing on that security, after the rate aforesaid, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, or within one calendar month after each of the same days respectively, Then and in such case

58. TRUST FOR SALE OF PLATE, &c.

the said [*mortgagee*], his executors, administrators, or assigns, should not be at liberty to call in or require payment of the said principal sum of £500 or any part thereof sooner or otherwise than by such instalments as are therein and hereinbefore mentioned. AND WHEREAS the above in part recited indenture was executed for the purpose of securing to the said [*mortgagee*] the sum of £500, part of the said debt of £1,000 so due and owing to him as aforesaid, with interest for the same, no money having in fact been advanced to the said [*mortgagor*], at the time of the execution of the same indenture. AND WHEREAS the said [*mortgagor*] hath agreed with the said [*mortgagee*] to secure to him, in manner hereinafter expressed, the payment of the sum of £500, (being the residue of his said debt of £1,000 after deducting therefrom the said sum of £500, for which a security has been given by the above-recited indenture), with interest for the same in the meantime, by the instalments hereinafter mentioned. AND WHEREAS, in pursuance of the said agreement, the said [*mortgagor*] hath this day accepted several bills of exchange, drawn on him by the said [*mortgagee*], for securing the payment of the sum of 314*l.* 10*s.* (being £300, part of the said balance of £500, with lawful interest computed thereon from the date of these presents to the period of the maturity of the said bills respectively, the particulars of which bills of exchange are contained in the first schedule hereunder written). AND WHEREAS, in further pursuance of the said agreement, the said [*mortgagor*] hath this day deposited with the said [*mortgagee*] the articles of plate, jewellery, and other things mentioned in the second schedule hereunder written, as the said [*mortgagee*] doth hereby acknowledge. NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement on the part of the said [*mortgagor*], He the said [*mortgagor*] doth for himself, his heirs, executors, and administrators, hereby covenant and agree with the said [*mortgagee*], his executors and administrators, that he the said [*mortgagor*], his heirs, executors, or administrators, will pay or cause to be paid to the said [*mortgagee*], his executors or administrators, on the —— day of —— which will be in the said year ——, the sum of £200, (being the balance or residue of the said debt of £1,000, after deducting therefrom the principal moneys secured by the said mortgage and bills of exchange, respectively, as aforesaid), with interest for the same

That mortgage was executed to secure part of recited debt.

Of agreement for security.

That mortgagor had accepted certain bills of exchange;

and deposited with mortgagee certain articles of plate.

Testatum;

Covenant by mortgagor to pay residue of debt not secured by mortgage or bills.

58. TRUST FOR SALE OF PLATE, &c.

Further *testatum:*

Declaration of trusts as to plate, &c., deposited.

sum of £200 after the rate aforesaid, computed from the date of these presents, without any deduction or abatement whatsoever. AND THIS INDENTURE ALSO WITNESSETH, and it is hereby agreed and declared between and by the said parties hereto, that the said articles of plate, jewellery, and other the things mentioned in the second schedule hereunder written, were delivered by the said [*mortgagor*] to the said [*mortgagee*], *Upon trust*, that the said [*mortgagee*], his executors, administrators, or assigns, do and shall, in case default shall be made in payment of the moneys secured, or intended to be secured, by the said bills of exchange respectively as aforesaid, or any part thereof, as and when the same respectively shall become due and payable, or in payment of the principal sum of £200 and interest hereinbefore covenanted to be paid on the —— day of ——, as aforesaid (*a*), or any part thereof, according to the true intent and meaning of these presents, absolutely sell and dispose of the same articles of plate, jewellery and other things, or any of them, or any part thereof, either together or in parcels, and either by public auction or private contract; with liberty to purchase in the same at any auction or auctions without being liable for any loss occasioned on a re-sale thereof, at such time or times, and for such price or prices, as to the said [*mortgagee*], his executors, administrators, or assigns, shall seem reasonable: And do and shall from time to time, out of the money arising from any such sale or sales as aforesaid, retain to himself or themselves, the said [*mortgagee*], his executors, administrators, or assigns, the sum or sums of money in the payment whereof such default shall have so happened as aforesaid, and all interest for the same or such part thereof respectively as shall from time to time remain unpaid, and all costs and expenses occasioned by the non-payment thereof, or in anywise attending the carrying the trusts of this present deed into execution: And from time to time, after payment of the principal moneys and interest in the payment whereof such default shall have happened as aforesaid (*b*), and the said costs and expenses, do

In default of payment of bills, &c., mortgagee authorized to sell.

Application of proceeds of sale.

(*a*) As the release of this part of the debt is conditional only, and therefore the present security may in event extend to it, the *ad valorem* stamp on the deed should be sufficient to cover the whole £500.

(*b*) This trust, it will be perceived, entitles the mortgagor to the surplus after paying the bill actually due at the time, so that the mort-

58. TRUST FOR SALE OF PLATE, &c.

and shall render and pay the surplus or residue (if any) of the money arising from such sale or sales unto the said [*mortgagor*], his executors, administrators, or assigns, for his and their use and benefit; And after full payment of all the principal moneys and interest and costs intended to be secured by these presents, either by means of the execution of the said trusts, or by means of any sum or sums of money paid by the said [*mortgagor*], his executors, administrators, or assigns, do and shall render and deliver such and so many of the said articles and things as shall not have been sold or disposed of in the execution of the trusts aforesaid, to the said [*mortgagor*], his executors, administrators, or assigns, for his or their use and benefit. AND *it is hereby further agreed and declared*, that it shall be lawful for the said [*mortgagee*], his executors, administrators, or assigns, to employ any person or persons in the sale or sales of the said articles and things, or any of them, and for that purpose to deliver the same into his, her, or their hands or custody, and to give such directions to, or enter into such agreements with, such person or persons for or respecting the sale of the said articles and things, or any of them, as to the said [*mortgagee*], his executors, administrators, or assigns shall seem proper. *And that* the said [*mortgagee*], his executors, administrators, or assigns, shall not be answerable or accountable for the acts and deeds of the person or persons whom he or they shall employ in the sale of, or to whom he or they shall deliver, the said articles and things, or any of them, or for any involuntary loss or damage to be occasioned in or about the execution of the trusts hereinbefore contained; (*And that the receipts of mortgagee, or his agents, shall discharge purchasers, &c., ut post*, p. 243) (*c*).

Authority to mortgagee to employ persons to sell plate:

without being answerable for his acts.

Recital of agreement by mortgagee to

AND WHEREAS, in order to induce the said [*mortgagor*] and [*wife*], his wife, to make and give such securities as are

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gagee has an obvious interest in not disposing of more of the pledged articles than would be just sufficient to pay such bill. Where the trust for sale is of a house, or anything which cannot be conveniently sold in parcels, the *whole* of the money unpaid should be made immediately recoverable on non-payment of *any* of the instalments; or some provision should be made for the investment of the unapplied proceeds of the sale by the mortgagee to secure the remaining instalments. (*Vide ante*, p. 80, n. (*b*)).

(*c*) Though this, in a sale of personal chattels, seems perhaps unnecessary, it is better, by inserting it, to prevent all question.

58. TRUST FOR SALE OF PLATE, &c.

hereinbefore respectively mentioned or contained for the payment of the said sum of £1,000 and the interest thereon, by the instalments and in the manner hereinbefore mentioned, the said [*mortgagee*] agreed to enter into the covenant or agreement hereinafter contained. NOW THIS INDENTURE LASTLY WITNESSETH, that, in pursuance of the said last-mentioned agreement, and in consideration of the premises, the said [*mortgagee*] doth for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said [*mortgagor*], his executors and administrators, in manner following, that is to say, that, if the said [*mortgagor*] and [*wife*], his wife, or either of them, or the heirs, executors, or administrators of them, or either of them, or the person or persons for the time being entitled to the hereditaments comprised in the said indenture of even date herewith, in remainder or reversion expectant on the said term of five thousand years, shall and do punctually pay or cause to be paid to the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of £500, by the several instalments and on the several days or times in and by the same indenture appointed for the payment of the same, and hereinbefore particularly mentioned; *And also* shall and do in the meantime punctually pay, or cause to be paid, to the said [*mortgagee*], his executors, administrators, or assigns, interest for the said sum of £500, or for such part thereof as shall for the time being remain owing and unpaid, after the rate aforesaid, by equal half-yearly payments, on the days in and by the said indenture of even date herewith appointed for the payment of the same, or within one calendar month after each of the same days respectively; *And also* shall and do punctually pay or cause to be paid the said bills of exchange as and when the same respectively shall become due and payable; then and in such case the said [*mortgagee*], his executors, administrators, or assigns, shall not nor will call for, or by any ways or means enforce, the payment of the sum of £200 hereinbefore covenanted to be paid on the —— day of —— as aforesaid, or the interest thereon, or any part thereof respectively, And then and in such case (but not otherwise), the said [*mortgagee*], his executors, administrators, or assigns, shall and will, on the request and at the costs of the said [*mortgagor*], his heirs, executors, or administrators, release and discharge him the said [*mortgagor*], his heirs, executors, and admini-

release part of the debt.

Further *testatum*;

Covenant by mortgagee, that, if mortgagor shall punctually pay the principal moneys secured by the contemporaneous mortgage;

and interest in the meantime, within one month after it becomes due,

and also the bills of exchange when due;

that mortgagee will not require payment of the residue of the debt:

58. TRUST FOR SALE OF PLATE, &c.

strators, and all his and their estates and effects whatsoever and wheresoever, of and from the same principal sum of £200 and the interest thereon, and every part thereof respectively; And also render and deliver up the said articles of plate, jewellery, and other things so deposited with him the said [*mortgagee*] upon the trusts, aforesaid, unto the said [*mortgagor*], his executors, administrators, or assigns, absolutely discharged from the trusts hereinbefore declared concerning the same, and all lien, claim, or demand whatsoever thereon, on account of the said principal sum of £200, or the interest thereon, or any part thereof respectively, any thing hereinbefore contained to the contrary thereof notwithstanding (*d*). IN WITNESS &c.

and will deliver up plate, &c.

Schedules.

FIRST SCHEDULE REFERRED TO IN THE PRECEDING INDENTURE.

Dates of Bills of Exchange.	*Amount.*	*To whom payable.*	*When due.*
1st Jan. 1829.	£40	Order of Drawer.	Two months after date.
3rd Jan. 1829.	£60	Order of Drawer.	Three months after date.

SECOND SCHEDULE REFERRED TO IN THE PRECEDING INDENTURE.

Articles of Plate and Jewellery.	*Weight.*
One Silver Tankard ————	—— Ounces.
One Pair of Silver Candlesticks ——	—— Ounces.

As to damage by fire.

(*d*) In some cases it may be prudent to provide for the event of the deposited articles being destroyed or injured by fire, and to give the depositary a power to effect an insurance.

59. DECLARATION *of* TRUSTS *of a Sum of* £3,000, 3*l.* *per Cent. Consols, in which a* MARRIED WOMAN *had a* REVERSIONARY INTEREST, *and which (with the Consent of the* Cestui que Trust *for Life) was transferred to the Husband, and re-settled for the purpose of enabling the Husband to make an effectual Security on the Fund (a).*

59. OF A REVERSIONARY FUND.

THIS INDENTURE, made the —— day of ——, BETWEEN [*trustees*], of &c., of the first part; [*cestui que trust* Parties.

(*a*) This precedent is given with a view to exemplify a plan by which the reversionary interest of a married woman in an equitable *chose en action* fund may be effectually charged,* where the person entitled to the immediate income, and on the determination of whose interest the reversion is expectant, consents to lend his aid to effect the arrangement†. The plan, it will be perceived, is, that the *cestui que trust* of the prior interest should consent to the fund being immediately transferred or paid to the husband of the legatee of the reversion, with the understanding that it shall be immediately vested in trustees, (one of whom may be nominated by the legatee for life, another by the husband and wife, and the third by the intended mortgagee), upon trust to pay the dividends and interest to the *cestui que trust* for life, or in any other manner in which he was entitled under the original trusts; and subject thereto, in trust for the mortgagee for securing his principal and interest, with an ultimate trust for the husband and wife, or the wife alone, as the case may be. By this means, the *cestui que trust* of the immediate income derives the same interest under the new as he did under the old trusts, so that his concurrence may reasonably be asked, (provided he will trust the husband with the momentary possession of the fund), and the mortgagee has an effectual security upon the reversion. Of the efficiency of the scheme to bar the wife's title by survivorship, of course, no doubt can be entertained, the fund having been actually reduced into possession; and the fact that it has been re-settled partly upon the former trusts is immaterial. In the case of *Doswell* v. *Erle*, 12 Ves. 473, *Sir William Grant* held, that payment of a legacy to the husband with the consent of the prior lega- Remarks upon the precedent in the text.

* As to this, *vide ante*, Vol. 5, p. 566, 2nd ed., and *infra*, tit. SETTLEMENTS, in the present edition.

† Sometimes the legatee for life is willing to accept an adequate annuity.

59. OF A REVERSIONARY FUND.

for life], of &c., of the second part; [*husband*], of &c., and [*wife*], his wife, of the third part; and [*mortgagee*], of &c., of the fourth part. WHEREAS (*recite will of A., by which a sum of* £3,000, 3*l. per cent. Consols was bequeathed to trustees, in trust for cestui que trust for life, and, after his decease, in trust for the mortgagor's wife absolutely.*) AND WHEREAS the said [*husband*] and [*wife*], his wife, lately contracted with the said [*mortgagee*] for a loan to the said [*husband*] of the sum of £500 at interest, to be secured on the reversionary interest in the sum of £3,000, 3*l.* per cent. Consolidated Annuities so bequeathed in trust for the said [*wife*] in and by the hereinbefore-recited will; but, inasmuch as the said [*husband*] and [*wife*], his wife, were advised that an effectual assignment could not be made of such reversionary interest unless the same were reduced into possession by the said [*husband*], the said [*husband*] and [*wife*], his wife, applied to and requested the said [*cestui que trust for life*] to consent to the said sum of £3,000, 3*l.* per cent. Consolidated Annuities being transferred by the trustees of the hereinbefore-recited will to the said [*husband*], upon the faith and understanding that a like sum should be immediately afterwards transferred by him the said [*husband*] to the said [*present trustees*], upon the trusts hereinafter declared concerning the same; to which application and request the said [*cestui que trust for life*] consented and agreed; and accordingly the said sum of £3,000, 3*l.* per cent. Consolidated

Recital of loan, and agreement.

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tee for life was a bar to the wife's claim by survivorship; and though this seems to be contrary to the case of *Pickard* v. *Roberts*, 3 Madd. 384, *ante*, Vol. 2, p. 81, 2nd ed., yet the silence of the learned judge who decided the latter case (which has been elswhere noticed, *vide post*, Vol. 9, p. 23, 1st ed.), in regard to this circumstance, renders it an unsafe guide on the point. Where it is intended that, under the new trusts, the husband shall take the whole ulterior interest, it would be better to effect the arrangement by two separate deeds, by the first of which the trustees should be declared to stand possessed of the fund simply for the *cestui que trust* for life, and then for the husband absolutely; and the husband by another deed would assign such reversionary interest to the mortgagee: the advantage of this plan is, that, if the *cestui que trust* for life should require, as he probably would, to have the custody of the declaration of trust, the deed of assignment to the mortgagee, being separate, might be placed in the hands of the mortgagee. The latter plan suggested, of course, cannot be adopted if the reversionary interest under the new trust be limited to the wife, as the effect of such a limitation would be to restore the fund to the same inconvenient situation as before.

59. OF A REVERSIONARY FUND.

Annuities was transferred by the said [*trustees of will*], with the concurrence and by the authority of the said [*cestui que trust for life*] and [*husband's wife*], his wife, to the said [*husband*]. AND WHEREAS, in pursuance of the said agreement, the said [*husband*] has this day executed a power of attorney, according to the form used at the Bank of England, authorizing the transfer of the said sum of £3,000, 3*l.* per cent. Consolidated Annuities into the names of the said [*present trustees*], (being trustees nominated and appointed by and on the behalf of the said [*cestui que trust for life*], [*husband*] and [*wife*], his wife, and [*mortgagee*], respectively), in the books of the said Bank, and hath delivered the said power of attorney to the said [*trustees*], as they hereby acknowledge. NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the above-recited agreement, and in consideration of the premises, and also in consideration of the sum of £500 of lawful British money paid by the said [*mortgagee*] to the said [*husband*], at or immediately before the execution of these presents, the receipt whereof the said [*husband*] doth hereby acknowledge, and from the same doth absolutely discharge the said [*mortgagee*], his heirs, executors, administrators, and assigns, *it is hereby declared and agreed by and between the said parties to these presents*, that the said [*trustees*], and the survivors and survivor of them, his executors or administrators, shall stand and be possessed of the sum of £3,000, 3*l.* per cent. Consolidated Annuities, so to be transferred into their names as aforesaid, from and immediately after the transfer thereof, *Upon the trusts* and for the intents and purposes hereinafter expressed and declared concerning the same, that is to say, UPON TRUST to receive the dividends and annual produce thereof, and from time to time to pay the same unto the said [*cestui que trust for life*], or his assigns, or permit him or them to receive the same during his life; and, after his decease, then as to the said sum of £3,000, 3*l.* per cent. Consolidated Annuities, and the dividends and annual produce thenceforth to arise therefrom, IN TRUST for the said [*mortgagee*], his executors, administrators, and assigns, for his and their own use and benefit; But *subject nevertheless*, as to the last-mentioned trust, to the proviso for redemption hereinafter contained, that is to say, PROVIDED ALWAYS, *and it is hereby declared and agreed*, that, if the said [*husband*] and [*wife*], his wife, or either of them, or the executors or

Of execution of power of attorney by husband.

Testatum.

In consideration of mortgage-money, &c.

trustees are to stand possessed of trust fund,

in trust to pay dividends to *cestui que trust* for life;

and then in trust for mortgagee, subject to redemption.

Proviso for redemption.

59. OF A REVERSIONARY FUND.

administrators of them or either of them, shall on the —— day of —— next, at &c., pay unto the said [*mortgagee*], his executors, administrators, or assigns, the sum of £500, with interest for the same at the rate of £5 per centum per annum, to be computed from the day of the date hereof, clear of all deductions whatsoever; then and in such case, and immediately thereupon, the said [*mortgagee*], his executors, administrators, or assigns, shall, on the request and at the costs of the said [*husband*] and [*wife*], his wife, or one of them, or the executors or administrators of them or one of them, assign the said sum of £3,000, 3*l.* per centum Consolidated Annuities unto the said [*husband*] and [*wife*], his wife, their executors, administrators, and assigns, or to such persons and in such manner as they shall direct or appoint, free from all incumbrances created or suffered by the said [*mortgagee*], his executors, administrators, or assigns, in the meantime;

Power of sale in default of payment.

PROVIDED ALSO, *and it is hereby further declared and agreed*, that, in case the said sum of £500 and the interest thereon, or any part thereof, respectively, shall remain unpaid after the day or time mentioned in the proviso for redemption hereinbefore contained, it shall be lawful for the said [*mortgagee*] his executors, administrators, or assigns, without the necessity of the concurrence of the said [*husband*] and [*wife*], his wife, or either of them, or the executors or administrators of them or either of them, (but subject to the interest for life of the said [*cestui que trust for life*]), absolutely to sell and dispose of the said sum of £3,000, 3*l.* per centum Consolidated Annuities, or any part thereof, either by public auction or private contract, with liberty, if deemed expedient, to buy in the same at any auction or auctions, without being answerable for any loss to be occasioned thereby, and to rescind or vary any contract for sale, and to assign the same when sold

Indemnities to purchasers.

to the purchaser or purchasers thereof; *And it is hereby declared*, that the receipt of the said [*mortgagee*], his executors, administrators, and assigns, to the purchaser or purchasers of the said trust premises, or any part thereof, for his, her, or their purchase-money or purchase-moneys, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof; and that such purchaser or purchasers shall not be bound to inquire whether any sale or sales made by the said [*mortgagee*], his executors, administrators, or assigns, is or are consistent with the trusts hereinbefore contained, nor be affected by express notice

that the same is or are contrary thereto. (*Declaration that mortgagee, his executors, &c., shall stand possessed of purchase-moneys, in trust, to retain principal and interest, and pay the residue to the husband and wife, their executors, administrators, or assigns, ut ante*, p. 247. *Declaration that power of sale shall not affect mortgagee's right of foreclosure, ut ante*, Vol. 5, p. 569, *and covenant by husband to pay principal and interest. Power to appoint new trustees, enabling each party to supply the vacancy occasioned by the removal of his own trustee, ut ante*, Vol. 4, p. 303, 2nd ed.; *and usual indemnities*). IN WITNESS &c.

59. OF A REVERSIONARY FUND.

Trusts of purchase-moneys, &c.

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60. ASSIGNMENT *by a* PRISONER *for* DEBT, *in order to procure his Liberation, of the* INTEREST *of* £1,000 *to a* TRUSTEE, *for securing and discharging* DEBT *and* COSTS *due to his Two detaining* CREDITORS, pari passu (*a*); *subject to a prior* MORTGAGE. TRUSTS *to endure only until Debts are satisfied.*

60. OF INTEREST OF A SUM OF MONEY.

THIS INDENTURE, made the —— day of ——, in the —— year &c., BETWEEN [*mortgagor*], of &c., of the first part; [*creditor A.*], of &c., of the second part; [*creditor B.*], of &c., of the third part; and [*trustee*], of &c., of the fourth part. WHEREAS [*testator*], late of ——, deceased, by his last will and testament in writing, bearing date on or about the —— day of ——, which was in the year ——, gave and bequeathed unto [*trustees*], their executors and administrators, the sum of £1,000, *In trust*, that they the said [*trustees*], or the survivor of them, or his executors or administrators, should, as soon as conveniently could be after his the said testator's decease, lay out and invest the same in

Parties.

Recital of will bequeathing interest of 1,000*l.* to mortgagor;

(*a*) This form is equally adapted to assign an equitable life interest in freehold or copyhold lands; a deed of this nature being quite sufficient to pass an equitable interest in such property. Scarcely any alteration would be requisite beyond that of the mere change of phraseology, by the substitution of "rents and profits" for "interest and annual produce."

Form adapted to other cases.

60. OF INTEREST OF A SUM OF MONEY.

their or his names or name, in the purchase of some of the parliamentary stocks or funds of Great Britain, or at interest upon real securities in England, with power to alter, vary, and transpose the same from time to time, at their or his discretion, and should pay the interest or dividends and annual produce thereof unto his grandson, the said [*mortgagor*], during his natural life; *And* the said testator appointed the said [*trustees*] executors of his said will; AND WHEREAS the said testator departed this life shortly after the making of his said will, without revoking or altering the same, and the said [*executors*] duly proved the same, and took upon themselves the execution thereof. AND WHEREAS the said [*executors*], as executors and trustees as aforesaid, appropriated the sum of £1,000 due to the said testator at his decease from [*A. B.*], of ——, on a mortgage security, as and for the legacy bequeathed by him to them, *In trust* as aforesaid, and the interest thereon hath ever since been paid to the said [*mortgagor*], or his assigns, accordingly. AND WHEREAS the said [*mortgagor*], in or about the month of ——, in the year 18——, made an assignment of the interest which should become due to him from the said principal sum of £1,000 unto [*prior mortgagee*], of &c., for securing and discharging a certain sum of money lent by him to the said [*mortgagor*], and interest for the same, and which, with the interest thereon, will be discharged in about twelve months hence. AND WHEREAS the said [*mortgagor*] is now a prisoner for debt in respect of several sums of money due from him to the above-named [*creditor A.*] and [*creditor B.*] respectively, that is to say, the sum of £75, for the debt and costs due to the said [*creditor A.*], and the sum of 48*l.* 15*s.* for the debt and costs due to the said [*creditor B.*] (*b*). AND WHEREAS the said [*mortgagor*], for effecting his speedy liberation from imprisonment, hath proposed to assign to the above-named [*trustee*], upon the trusts and for the purposes hereinafter mentioned, the interest which may hereafter become due to him the said [*mortgagor*] from the said sum of £1,000, beyond what will suffice to discharge the principal money and interest secured to the said [*prior mortgagee*]; and

of appropriation of a mortgage to pay legacy;

of subsisting mortgage executed by mortgagor;

of mortgagor, being a prisoner at the suit of two creditors, and his agreement to assign interest to secure their debts, subject to prior mortgage.

Stamp.

(*b*) This deed will be subject to a mortgage stamp in respect of each debt, (*vide ante*, Vol. 5, p. 521), and a further stamp should be imposed in respect of the costs, &c., the maximum of which is, it will be seen, limited, in order to restrict the amount of the stamp.

60. OF INTEREST OF A SUM OF MONEY.

the said [*creditor A.*] and [*creditor B.*], respectively, have agreed to accept the assignment so proposed to be made by the said [*mortgagor*], and thereupon to consent to his being discharged out of custody. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, and of the sum of *5s.* paid by the said [*trustee*] to the said [*mortgagor*] at the time of the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, He the said [*mortgagor*], at the request and on the nomination of the said [*creditor A.*] and [*creditor B.*], testified by their severally executing these presents, *Doth* hereby bargain, sell, assign, and set over, unto the said [*trustee*], his executors, administrators, and assigns, ALL the interest and annual produce which shall hereafter become due to him the said [*mortgagor*] from the aforesaid mortgage debt, or principal sum of £1,000, and from any other funds or securities on which the hereinbefore-mentioned legacy of £1,000, shall from time to time be invested, (except what shall suffice to discharge the principal money and interest secured to the said [*prior mortgagee*], as aforesaid), and all the powers and remedies of him the said [*mortgagor*], both at law and in equity, for securing and enforcing the payment thereof: *And* all the right, title, equity, and benefit of redemption, property, claim, and demand whatsoever, of him the said [*mortgagor*] in and to the future interest and produce of the said sum of £1,000. TO HAVE, receive, and take the said interest and annual produce of the said sum of £1,000 (except as before excepted) unto the said [*trustee*], his executors, administrators, and assigns, for and during the natural life of the said [*mortgagor*], or for and during so long as the trusts hereinafter created shall endure, Upon the trusts and for the purposes hereinafter mentioned, that is to say, UPON TRUST, with and out of the money which shall first come to the hands of the said [*trustee*], his executors, administrators, or assigns, by virtue of these presents, to defray the expense of preparing this indenture and attending the execution thereof, and of preparing copies or notices thereof, and of serving them on the said [*trustee*] and [*prior mortgagee*]; *And also* all costs and expenses which the said [*trustee*], his executors, administrators, or assigns, shall sustain or incur in the execution of the trusts hereby reposed in him and them, or in anywise in relation thereto, (but which costs and expenses shall not exceed in the whole the

Testatum.

Mortgagor assigns to trustee

interest and produce of 1,000*l.*, after paying former mortgage debt;

and all the right, &c.

Habendum, to trustee during the life of mortgagor, or so long as trusts shall endure.

Declaration of trusts.

60. OF INTEREST OF A SUM OF MONEY.

sum of £——); And UPON FURTHER TRUST from time to time to pay the residue of the said interest and produce, when and as the same shall be received, unto the said [*creditor A.*] and [*creditor B.*] respectively, and their respective executors, administrators, and assigns, rateably and proportionably, according to the amounts of the several debts now due to them respectively as aforesaid, until the same respectively shall be fully satisfied and discharged (*c*). *And it is hereby declared*, that the receipt of the said [*trustee*], his executors, administrators, or assigns, for the interest and annual produce hereby assigned of the said sum of £1,000, shall effectually discharge the trustees for the time being of the hereinbefore-recited will, or other the person or persons paying the same, from all responsibility in respect of the application thereof; And the production of these presents shall be deemed and considered as conclusive evidence of the authority of the said [*trustee*], his executors, administrators, or assigns, to receive the same being or continuing in full force and operation, and not having determined by the expiration of the said trusts. (*Add usual indemnity to trustee*). AND the said [*mortgagor*] doth, for himself, his heirs, executors, and administrators, covenant with the said [*creditor A.*] and [*creditor B.*], jointly and severally, and their several and respective executors, administrators, and assigns, by these presents, in manner following, that is to say (*d*), that he the said [*mortgagor*] hath not heretofore sold, assigned, released, charged, or encumbered the interest or produce of the aforesaid sum of £1,000 or any part thereof, except as hereinbefore mentioned, but that he now hath in himself good right, full power, and lawful and absolute authority to bargain, sell, and assign the same unto the said [*trustee*], his executors, administrators, and assigns, in manner aforesaid, according to the true intent and meaning of these presents. *And moreover*, that he the said [*mortgagor*],

Receipts of trustee to discharge trustees of will;

and production of these presents to be conclusive evidence of trustee's continuing authority.

Covenant by mortgagor that he has a right to assign;

and for further assurance.

As to Welsh mortgages.

(*c*) This security is somewhat in the nature of a Welsh mortgage, under which the creditor is placed in the possession of the debtor's lands until his principal and interest are satisfied, without investing him with the ordinary rights of foreclosure, &c., appertaining to the character of a mortgagee. See some remarks upon this species of security, ante, Vol. 5, p. 96, and 1 Cov. Pow. Mortg. 373.

(*d*) If the debtor were in custody under a *ca. sa.*, as no further execution could be obtained on the judgment after his discharge, add a covenant to pay the debt.

his executors or administrators, shall and will, at any time, and from time to time, at his or their own costs, upon the request of the said [*creditor A.*] and [*creditor B.*], or either of them, or the executors, administrators, or assigns of either of them, make, do, and execute all such further acts, deeds, and assurances in the law, for the more effectually assigning of the interest and produce of the aforesaid sum of £1,000 unto the said [*trustee*], his executors, administrators, and assigns, upon the trusts and in the manner aforesaid, as by the said [*creditor A.*] and [*creditor B.*], or either of them, or the executors, administrators, or assigns of either of them, their or his counsel learned in the law, shall be reasonably required. IN WITNESS &c.

60. OF INTEREST OF A SUM OF MONEY.

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61. DEED *to secure a Debt by the personal* COVENANT *of the* DEBTOR, *payable by* INSTALMENTS, *and Interest in the mean Time, and a* POWER *for the Creditor to* INSURE *the* DEBTOR'S LIFE; *with several* COVENANTS *and* CLAUSES *concerning the* PAYMENT *of the* PREMIUMS *and keeping the* POLICIES *on* FOOT. *Agreement to* CHARGE LANDS *in Default of Payment of any of the Instalments.*

61. COVENANT TO PAY, WITH POWER TO INSURE LIFE OF DEBTOR.

THIS INDENTURE, made &c., BETWEEN [*debtor*], of &c., of the one part; and [*creditor*], of &c., of the other part. WHEREAS the said [*debtor*] is indebted to the said [*creditor*] in the sum of £—— for goods sold and delivered to him the said [*debtor*], and is also indebted to him in the sum of £—— for principal and interest due upon bond, (the said several sums making together the sum of £——), as he the said [*debtor*] doth hereby acknowledge. AND WHEREAS the said [*debtor*], being at present unable to pay the said sum of £——, hath offered and proposed to secure the payment of the same with interest, after the rate, at the times, and in manner, hereinafter appointed for payment thereof respectively. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said offer and proposal, and in consideration of the premises, the said [*debtor*] doth for himself, his heirs, executors, and admini-

Parties.

Recital of debt due.

Agreement for security.

Testatum.

Debtor covenants to pay debt by instal-

61. COVENANT TO PAY, WITH POWER TO INSURE LIFE OF DEBTOR.

ments, and interest in meantime half-yearly.

strators, covenant and agree with the said [*creditor*], his executors and administrators, by these presents, that he the said [*debtor*], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*creditor*], his executors or administrators, the said principal sum of £—— by the instalments following; (that is to say), the sum of £——, being one equal third part thereof, on the —— day of ——, which will be in the year ——; the sum of £——, being one other equal third part thereof, on the —— day of ——, which will be in the year ——; and the sum of £——, being the remaining one equal third part of the said sum of £——, on the —— day of ——, which will be in the year ——; And also shall and will well and truly pay or cause to be paid unto the said [*creditor*], his executors or administrators, interest after the rate of £5 per centum per annum for the said sum of £——, or for so much thereof as shall from time to time remain unpaid or owing, by two equal half-yearly payments, on the —— day of —— and the —— day —— in every year, without any deduction or abatement whatsoever out of the said principal moneys and interest, or any part thereof respectively, for any present or future taxes or impositions, or any other matter, cause, or thing whatsoever (*a*).

Further *testatum.*

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said offer and proposal, and in consideration of the premises, the said [*debtor*] doth for himself, his heirs, executors, and administrators, further covenant and agree with the said [*creditor*], his executors, administrators, and assigns, by these presents, that it shall be lawful for the said [*creditor*], his executors, administrators, or assigns, from time to time and at all times hereafter, to effect any policy or policies of insurance upon the life of the said [*debtor*], for any sum or sums of money not exceeding (together with the policy or policies, if any, which shall then already have been effected by him on the life of the said [*debtor*], and shall then be existing) the amount of the moneys which for the time being shall be owing or unpaid on the security of these presents, (including the moneys, if any, which shall be then due or owing for the expenses of effecting or keeping on foot any such

Debtor covenants that creditor may effect policy of insurance on his life;

(*a*) If the deed stopped here, it would not be liable to any *ad valorem* mortgage duty. (*Vide ante*, Vol. 3, p. 473, n. (*e*), 2nd ed.)

61. COVENANT TO PAY, WITH POWER TO INSURE LIFE OF DEBTOR.

policy or policies of insurance as aforesaid; And from time to time, during the life of the said [*debtor*], so long as any money shall be due on this present security, to keep on foot such policy or policies respectively, but with power, in case he shall think the same expedient, from time to time, when and as any instalment or instalments of principal money shall be paid by the said [*debtor*], his heirs, executors, or administrators, to reduce the amount of such insurance or insurances accordingly, and to cancel or surrender any subsisting policy or policies, either for or without any consideration; *And that* he the said [*debtor*] shall and will at any time or times hereafter, at the request and desire of the said [*creditor*], his executors, administrators, and assigns, appear in person, so often as there may be occasion for so doing, (upon having proper notice thereof), at any office or place of insurance within the cities of London or Westminster, or send the said [*creditor*], his executors, administrators, or assigns, notice of his place of abode, and such vouchers as the office may require from medical men and others respecting his state of health, from time to time, in order that the said [*creditor*], his executors, administrators, or assigns, (if he or they shall think fit) may effect and keep on foot any such policy or policies of insurance on the life of the said [*debtor*] as aforesaid; *And also* that he the said [*debtor*] shall not nor will at any time hereafter depart and leave the kingdom, or go and travel upon the seas, or reside in foreign parts, or enter into any active military service, without giving, previously to such departure or entry, ten days' notice in writing, at the least, to the said [*creditor*], his executors, administrators, or assigns, of his the said [*debtor's*] intention, in order to enable the said [*creditor*], his executors, administrators, or assigns, to make known the same at the office or offices where the life of the said [*debtor*] shall or may be insured, so that the additional premium or premiums to be thereby incurred from time to time, for the purpose of keeping on foot any such policy or policies of insurance, may be paid unto the office or offices where the life of the said [*debtor*] may for the time being be so insured; *And further*, that he the said [*debtor*], his heirs, executors, or administrators, shall and will, from time to time and at all times hereafter, on demand, well and truly pay, or cause to be paid, unto the said [*creditor*], his executors, admini-

and keep same on foot, but with power to reduce the amount of insurance;

that debtor will appear in person at insurance office,

and will not leave the kingdom &c. without notice;

also to repay premiums of insurance advanced by creditor, with interest.

61. COVENANT TO PAY, WITH POWER TO INSURE LIFE OF DEBTOR.

strators, and assigns, all such premium and premiums, and duty, and other sum or sums of money, as the said [*creditor*], his executors, administrators, or assigns, shall or may at any time or times advance or pay for effectuating or keeping on foot any such policy or policies of insurance as aforesaid, (including such additional premium or premiums as shall or may become payable by reason of the said [*debtor's*] departing and leaving this kingdom, or going or travelling upon the seas, or residing in foreign parts, or entering into any active military service), with interest for the same respectively after the rate of £5 per centum per annum, from the time or respective times of advancing or paying the same respectively; AND *it is hereby agreed and declared* that the said [*creditor*], his executors, administrators, and assigns, shall stand and be possessed of and interested in all and every the sum and sums of money to become due or payable by virtue of or under any policy or policies of insurance to be effected as aforesaid; UPON TRUST that he the said [*creditor*], his executors, administrators, and assigns, do and shall in the first place, by and out of the same, retain, pay, and satisfy all the expenses (if any) which shall be incurred by him or them, in receiving or recovering such sum or sums of money, or otherwise in or about the execution of the trusts hereby declared; And do and shall, in the next place, by and out of the same moneys, retain, pay, and discharge the said sum of £——, or such part thereof as shall remain unpaid, and all interest which shall be due for the same, and all and every sum and sums of money (if any) which shall or may have been paid or advanced by the said [*creditor*], his executors, administrators, or assigns, for effecting or keeping on foot any such policy or policies of insurance as aforesaid, and all interest for the same respectively, or which shall otherwise be due or owing on the security intended to be made by these presents; and do and shall render and pay all the surplus (if any) which shall remain of the said moneys, after answering and satisfying the trusts and purposes aforesaid, unto the executors, administrators, or assigns, of the said [*debtor*], for their proper use and benefit. AND the said [*debtor*] doth hereby, for himself, his heirs, executors, and administrators, further covenant and agree with the said [*creditor*], his executors, administrators, and assigns, that if he the said [*debtor*], his heirs, executors, or administrators, shall make default in

Declaration of trusts of sums to be received under any policy.

Covenant by debtor, in default of payment of the instalments, to charge his real estates.

payment of the said sum of £—— and interest, by the instalments and in manner hereinbefore appointed for the payment thereof respectively, Then, and in such case, he the said [*debtor*] or his heirs shall and will, at his or their proper costs and charges, well and effectually, and to the satisfaction of the counsel of the said [*creditor*], his executors, administrators, or assigns, charge, and make subject all the real estates of or to which he the said [*debtor*] now is or shall then be seised or entitled, with and to the payment of all the principal moneys and interest intended to be secured by this present indenture, or so much thereof as shall be then unpaid: PROVIDED ALWAYS, and it is hereby agreed and declared, that this present indenture shall not be a security to the said [*creditor*], his executors, administrators, or assigns, for any greater sum of money in the whole than the sum of £——. IN WITNESS &c.

61. COVENANT TO PAY, WITH POWER TO INSURE LIFE OF DEBTOR.

Limitation of amount to be recoverable under this security.

TRANSFERS OF MORTGAGES.

1. BY ASSIGNMENT OF A TERM.

1. TRANSFER *of* MORTGAGE *for the Residue of a* TERM (*a*), *where a* FURTHER *Sum is* ADVANCED *to the* MORTGAGOR.

Parties.

THIS INDENTURE, made on the 1st day of September, in the year of our Lord 18—, BETWEEN [*transferror*], of &c., of the first part; [*mortgagor*], of &c., of the second part; and [*transferree*], of &c., of the third part.

Recital of mortgage;

WHEREAS, by indenture bearing date on or about the —— day of ——, and made between the said [*mortgagor*], of the one part, and the said [*transferror*], of the other part, in consideration of the sum of £5,000, paid to the said [*mortgagor*] by the said [*transferror*], the said [*mortgagor*], *Did* grant, bargain, sell, and demise unto the said [*transferror*], his executors, administrators, and assigns, (*describe parcels as in the mortgage*); *To hold* the same unto the said [*transferror*], his executors, administrators, and assigns, for the term of five hundred years from thenceforth next ensuing, without impeachment of waste; subject, nevertheless, to a proviso or condition therein contained for making void the same on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*transferror*], his executors, administrators, or assigns, of the sum of £5,000, with interest for the same, on the —— day of —— then next.

—of non-payment;

AND WHEREAS default was made by the said [*mortgagor*] in payment of the said principal sum and interest on the day mentioned in the said proviso for redemption.

—that principal money is due.

AND WHEREAS the said principal sum of £5,000 now remains due and owing to the said [*transferror*], upon and

(*a*) Where the new mortgagee is to have a conveyance of the fee, the term should be assigned to a trustee for him, to attend the inheritance. (See a Precedent of this nature, *ante*, p. 183).

1. BY ASSIGNMENT OF A TERM.

by virtue of the hereinbefore-recited mortgage-security, but all interest for the same hath been paid and discharged up to the day of the date of these presents, as he doth hereby acknowledge (*b*). AND WHEREAS the said [*mortgagor*], being desirous of paying off the sum of £5,000 so due and owing to the said [*transferror*], and of raising the further sum of £1,000 to supply his other occasions, hath applied to and requested the said [*transferree*] to lend and advance to him the said [*mortgagor*] the sum of £6,000, which the said [*transferree*] hath consented and agreed to do accordingly, upon having the repayment thereof, with interest secured to him in manner hereinafter expressed,

Of agreement for loan.

NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £5,000 of lawful British money, paid by the said [*transferree*] to the said [*transferror*] at or before the execution of these presents, at the request and by the direction of the said [*mortgagor*], testified by his executing these presents, (in full satisfaction and discharge of all moneys owing to the said [*transferror*] upon and by virtue of the hereinbefore-recited indenture of mortgage), the receipt of which said sum of £5,000 the said [*transferror*] doth hereby acknowledge, and therefrom doth acquit, release, and discharge the said [*transferree*], his executors, administrators, and assigns, and also the said [*mortgagor*], his heirs, executors, and administrators; And also, in consideration of the sum of £1,000 of like lawful money at the same time paid by the said [*transferree*] to the said [*mortgagor*], the payment and receipt of which said several sums of £5,000 and £1,000 (making together the sum of £6,000) the said [*mortgagor*] doth hereby acknowledge, and therefrom doth acquit, release, and discharge the said [*transferree*], his executors, administrators, and assigns, he the said [*transferror*], (at the request and by the direction of the said [*mortgagor*], testified as aforesaid), *Doth* by these presents bargain, sell, assign, and transfer, And the said [*mortgagor*] *Doth* grant, ratify, and confirm unto the said

Testatum:

In consideration of moneys advanced to transferror and mortgagor.

Transferror, by the direction of mortgagor, transfers to transferree,

(*b*) It generally happens that an arrear of interest is due on the mortgage, which is paid out of the further sum advanced by the transferree; but it is more convenient to state, as in the text, that the interest has been paid by the mortgagor down to the date of the transfer, because the exact amount cannot be ascertained until it is known on what day the principal will be paid.

1. BY ASSIGNMENT OF A TERM.

[*transferree*], his executors, administrators, and assigns, ALL AND SINGULAR the —— hereditaments, and premises, comprised in and demised by the hereinbefore-recited indenture of the —— day of ——, together with their and every of their rights, members, and appurtenances; *And* all the estate, right, title, interest, trust, term of years yet to come and unexpired, property, claim, and demand whatsoever, at law and in equity, of him the said [*transferror*], in, to, or out of the same and every part thereof; *And also*, all deeds, evidences, and writings whatsoever relating to or in anywise concerning the same hereditaments and premises, or any part thereof, which they the said [*transferror*] and [*mortgagor*], or either of them, now have or hath in the custody or possession of them or either of them, or can or may obtain without suit at law or in equity. TO HAVE AND TO HOLD the said ——, and all and singular the premises hereby assigned, or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, henceforth during all the residue and remainder now to come and unexpired of the term of five hundred years created by the hereinbefore-recited indenture of mortgage, and for all other the estate, term, and interest, if any, of the said [*transferror*] therein, under or by virtue of the same indenture, freed and absolutely discharged from the proviso so contained in the said indenture of mortgage as aforesaid, and all equity of redemption subsisting by virtue thereof; But *subject, nevertheless*, to the proviso or agreement for redemption hereinafter contained, that is to say, PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties to these presents, That, if the said [*mortgagor*], his heirs, executors, administrators, or assigns, do and shall pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, the sum of £6,000 of lawful British money with interest for the same after the rate of 4*l.* 10*s.* per centum per annum, in the manner following, (that is to say), the sum of £135, being one half-year's interest on the said principal sum of £6,000, after the rate aforesaid, at or upon the first day of March next ensuing, and the further sum of £6,135, being the whole principal money and one other half-year's interest thereon, after the rate aforesaid, at or upon the first day of September next ensuing, without any deduction or abatement whatsoever out

the premises,

and all the estate, &c.,

and all deeds, &c.

Habendum, for the residue of mortgage term,

Proviso for redemption.

1. BY ASSIGNMENT OF A TERM.

of the same or any part thereof, for or in respect of taxes or on any other account whatsoever; then, and in such case, and immediately after such payments shall be so made as aforesaid, he the said [*transferree*], his executors, administrators, or assigns, shall and will, at the request, costs, and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, surrender and yield up all and singular the —— and premises hereby assigned or intended so to be, unto him the said [*mortgagor*], his heirs and assigns, or otherwise assign the same unto such person or persons, and in such manner, as he or they shall direct, for the residue and remainder which shall be then unexpired of the said term of five hundred years therein, and for all other the estate, term, and interest (if any) of the said [*transferree*] therein under or by virtue of these presents, free from all incumbrances by him the said [*transferree*], his executors, administrators, or assigns, thereon in the meantime. AND he the said [*transferror*], doth hereby for himself, his executors, administrators, and assigns, covenant and agree with the said [*transferree*], his executors, administrators, and assigns, that he the said [*transferror*] hath not at any time heretofore done, committed, or executed, or willingly permitted, any act, matter, or thing whatsoever, by means whereof the —— and premises hereby assigned, or intended so to be, or any part thereof, or the said term of five hundred years therein, are, is, can, shall, or may be in anywise impeached, charged, incumbered, or in any manner prejudicially affected in title, charge, estate, or otherwise howsoever. AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said [*transferree*], his executors, administrators, and assigns, in manner following, (that is to say); That he the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, the sum of £6,000, &c., (*and interest, following the terms of the proviso for redemption*); *And also* that (subject to the term of years created by the hereinbefore-recited indenture of mortgage) the said [*mortgagor*], is now seised to him and his heirs of the —— and premises hereby assigned, or intended so to be, for a clear, rightful, absolute, and indefeasible estate of inheritance in fee-simple in possession; *And also*, that (subject as aforesaid) the said [*mortgagor*] hath now in him-

Covenant by transferror that he has not incumbered.

Covenants by mortgagor to pay principal and interest;

That (subject to mortgage term) he is lawfully seised;

and has good right to grant

1. BY ASSIGNMENT OF A TERM.

self good right and absolute authority to grant and confirm the said —— and premises unto the said [*transferree*], his executors, administrators, and assigns, for all the residue now unexpired of the said term of five hundred years, in manner aforesaid, according to the true intent and meaning of these presents; *And further* (*c*), that it shall be lawful for the said [*transferree*], his executors, administrators, and assigns, from time to time and at all times after default shall be made in payment of the said sum of £6,000 and interest, or any part thereof, contrary to the proviso hereinbefore contained, and to the true intent and meaning of these presents, peaceably and quietly to enter into, hold, and enjoy the —— and premises hereby assigned, or intended so to be, and to receive the rents and profits thereof for his and their own use and benefit, during all the residue which shall be then unexpired of the said term of five hundred years therein, without the lawful interruption or denial of any person or persons whomsoever; *And that* free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*mortgagor*], his heirs, executors, administrators, or assigns, effectually saved harmless and kept indemnified from and against all and all manner of former and other estates, titles, charges, and incumbrances whatsoever: *And moreover*, that he the said [*mortgagor*], his heirs and assigns, and every other person having or lawfully claiming any estate, right, title, trust, or interest, either at law or in equity, in, to, or out of the —— and premises hereby assigned, or intended so to be, shall and will, from

and for quiet enjoyment after default;

free from incumbrances;

and for further assurance.

As to the propriety of inserting covenants of title in transfers of mortgages.

(*c*) Where a further sum is advanced by the transferree, it seems to be proper that the mortgagor should enter into covenants for title, notwithstanding that such covenants are contained in the mortgage deed; for, though the transferree would, as assignee of the term, have the benefit of those covenants which run with the land; and though the transferree, having the legal estate, would not, even as to his new advances, be affected by any incumbrances created by the mortgagor in the interval between the mortgage and the transfer, of which he had no notice; yet the amount of damages recovered under the covenants in the mortgage deed would, it is conceived, be measured by the sum advanced at the time of the creation of the term: and therefore the present covenants are not without use. An express stipulation in the present deed, that the covenants should extend to such sum, would, however, answer the purpose.

As to the utility of covenants for title in mortgages, *vide ante*, Vol. 5, p. 512.

time to time and at all times, upon every reasonable request of the said [*transferree*], his executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, make, do, acknowledge, and execute, or cause to be made, done, acknowledged, and executed, every such further and other grant, act, deed, conveyance, and assurance in the law whatsoever, for the further and more effectually assigning, conveying, and assuring the same —— and premises, with the appurtenances, unto him the said [*transferree*], his executors, administrators, and assigns, during all the residue which shall be then unexpired of the said term of five hundred years therein, as by him the said [*transferree*], his executors, administrators, and assigns, or his or their counsel in the law, shall be reasonably required. AND LASTLY, it is hereby declared and agreed by and between the said parties hereto, that, until default shall be made in payment of the said sum of £6,000 and interest, or some part thereof respectively, contrary to the proviso and covenant for the payment thereof respectively hereinbefore contained, it shall be lawful for the said [*mortgagor*], his heirs and assigns, peaceably and quietly to hold and enjoy the —— and premises hereby assigned, or intended so to be, and to receive the rents and profits thereof for his and their own use, without the lawful interruption or disturbance of the said [*transferree*], his executors or administrators, or any person or persons claiming from or under him or them. IN WITNESS &c.

1. BY ASSIGNMENT OF A TERM.

Agreement for enjoyment by mortgagor until default.

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2. TRANSFER *of* MORTGAGE *in* FEE, *where a* FURTHER *Sum is* ADVANCED *to the* MORTGAGOR. (*Variation where the Mortgage is transferred with a* TRUST *for* SALE, *such Trust* BEING *or* NOT *being in the* ORIGINAL MORTGAGE: *Also, where* NO FURTHER *Sum is* ADVANCED).

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

THIS INDENTURE, of three parts, made &c., BETWEEN [*transferror*], of &c., of the first part; [*mortgagor*], of &c., of the second part; and [*transferree*], of &c., of the third part,

Parties.

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

Recital of mortgage;

WHEREAS, by indentures of lease and release or mortgage, bearing date respectively on or about the —— and —— days of ——, and made between the said [*mortgagor*], of the one part, and the said [*transferror*], of the other part, in consideration of the sum of £—— then paid and advanced by the said [*transferror*] to the said [*mortgagor*], the said [*mortgagor*] did convey and assure unto the said [*transferror*], and his heirs, the —— hereditaments hereinafter described and hereby released, with their appurtenances; *To hold* the same unto and to the use of the said [*transferror*], his heirs and assigns, for ever, *subject, nevertheless,* to a proviso or condition in the said indenture of release contained for making void the same on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*transferror*], his executors, administrators, or assigns, of the sum of £5000, with interest for the same after the rate of £5 per centum per annum, on a day therein mentioned and since past (*a*). AND WHEREAS by a certain deed-poll or instrument in writing, under the hand and seal of the said [*mortgagor*], bearing date on or about the —— day of ——, (and indorsed upon the hereinbefore-recited indenture of mortgage), he the said [*mortgagor*] charged the —— and hereditaments comprised in the same indenture with the payment to the said [*transferror*], his executors, administrators, or assigns, of the further sum of £1,000, and interest for the same after the rate aforesaid (*b*). AND

further charge;

(*a*) If there is a trust for sale in default of payment, recite it.

(*b*) If the equity of redemption has been conveyed to the present borrower, add—

Conveyance of the equity of redemption to present mortgagor.

"AND WHEREAS, by indentures of lease and release, bearing date, respectively, on or about the —— and —— days of ——, and made between the said [*mortgagor*], of the one part, and the said [*purchaser, i. e. the present borrower*], of the other part; in consideration of the sum of £—— paid by the said [*purchaser*] to the said [*mortgagor*], he the said [*mortgagor*] *Did* convey and assure unto the said [*purchaser*] and his heirs, *All* and singular the —— and hereditaments comprised in the hereinbefore-recited indentures of lease and release of the —— and —— days of ——, with their appurtenances; *To hold* the same unto and to the use of the said [*purchaser*], his heirs and assigns, for ever; *Subject,*

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

WHEREAS the said several principal sums of £5,000 and £1,000, making together the sum of £6,000, still remain due and owing to the said [*transferror*], by virtue of the hereinbefore-recited mortgage securities, but all interest for the same respectively hath been fully paid and discharged up to the day of the date of these presents, as they the said [*mortgagor*] and [*transferror*] do hereby respectively acknowledge.

that principal sums are due.

AND WHEREAS the said [*mortgagor*], being desirous of paying off the sum of £6,000 so remaining due and owing to the said [*transferror*], and of raising the further sum of £2,600 to supply his other occasions, hath applied to and requested the said [*transferree*] to lend and advance to him the said [*mortgagor*] the sum of £8,600, which the said [*transferree*] hath consented and agreed to do accordingly, upon having the re-payment thereof, with interest, secured by a mortgage of the said —— and hereditaments in the manner hereinafter expressed (*c*). NOW THIS INDENTURE

Agreement for loan.

Testatum.

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nevertheless, to the aforesaid mortgages thereon, and to the payment of the said several principal sums of £5,000 and £1,000 respectively thereby secured, and of all interest to accrue and grow due in respect of the same principal sums respectively from the day of the date of the said indenture of release now in recital."

(*c*) If no further sum is advanced, vary the recital, &c., thus—

"AND WHEREAS the said [*transferror*], having applied to and requested the said [*mortgagor*] to pay him the said principal sum of £6,000, the said [*transferree*], for the purpose of enabling the said [*mortgagor*] to comply with such application and request, hath agreed to lend and advance to him the said sum of £6,000, at interest, upon the security of the said mortgaged hereditaments, in manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £6,000 of lawful British money, paid by the said [*transferree*] to the said [*transferror*] at or immediately before the execution of these presents, at the request and by the direction of the said [*mortgagor*], testified by his executing these presents (being in full satisfaction, &c.), the receipt of which sum of £6,000 the said [*transferror*] doth hereby acknowledge, and from the same doth release and discharge the said [*transferree*], his heirs, executors, administrators, and assigns, and also

Variation where no further sum is advanced.

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

In consideration of principal sum paid to mortgagee,

and of a further sum to mortgagor,

transferror, by direction of mortgagor, conveys, and mortgagor confirms, to transferree,

Parcels,

and all the estate, &c.

Habendum.

WITNESSETH, that, in consideration of the sum of £6,000 of lawful British money, paid by the said [*transferree*] to the said [*transferror*], at or before the execution of these presents, at the request and by the direction of the said [*mortgagor*], testified by his executing these presents, (being in full satisfaction and discharge of all moneys owing to the said [*transferror*] upon and by virtue of the hereinbefore-recited mortgage-securities, or either of them); the receipt of which sum of £6,000 he the said [*transferror*] doth hereby acknowledge, and therefrom doth release and discharge the said [*transferree*], his executors, administrators, and assigns, and also the said [*mortgagor*], his heirs, executors, and administrators; And also in consideration of the sum of £2,600, of like lawful money, at the same time paid by the said [*transferree*] to the said [*mortgagor*], the payment and receipt of which several sums of £6,000 and £2,600 (making together the sum of £8,600), the said [*mortgagor*] doth hereby acknowledge, and therefrom doth release and discharge the said [*transferree*], his executors, administrators, and assigns, he the said [*transferror*], at the request and by the direction of the said [*mortgagor*], testified as aforesaid, *Doth* by these presents bargain, sell, and release; And the said [*mortgagor*] *Doth* grant, bargain, sell, release, and confirm unto the said [*transferree*], (in his actual possession now being by virtue of a bargain and sale to him thereof made by the said [*transferror*] and [*mortgagor*], in consideration, &c.), and to his heirs, ALL THAT (*describe parcels*), Together with all houses, &c., And the reversion, &c., *And all* the estate, right, title, use, trust, property, claim, and demand whatsoever, at law and in equity, of them the said [*transferror*] and [*mortgagor*], and each of them, in, to, or out of the said hereditaments and premises; *And also* all deeds, evidences, and writings whatsoever, relating to or in anywise concerning the same hereditaments and premises, or any part thereof, which they the said [*transferror*] and [*mortgagor*], or either of them, have or hath in their or either of their custody or possession, or can obtain without suit: TO HAVE AND TO HOLD the said ——, and all and singular

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the said [*mortgagor*], his heirs, executors, and administrators, he the said [*transferror*] *Doth*," &c., *ut supra, in the text.*

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

other the hereditaments hereinbefore described, and hereby released or intended so to be, with their appurtenances, unto the said [*transferree*] and his heirs; To THE ONLY PROPER USE of him the said [*transferree*], his heirs and assigns, for ever, freed and absolutely discharged of and from the proviso for the redemption thereof contained in the hereinbefore-recited indenture of mortgage of the —— day of ——, and all equity thereupon (*d*), but subject, nevertheless, to the proviso for redemption hereinafter contained (*e*): (that is to say), PROVIDED ALWAYS, *and it is hereby declared and agreed by and between the said parties to these presents*, that, if the said [*mortgagor*], his heirs, executors, administrators, or assigns, do and shall pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, at or in the common dining-hall of Lincoln's Inn, in the county of Middlesex, the sum of £8,600 of lawful British money, with interest for the same after the rate of £5 per centum per annum, in the manner following, (that is to say), the sum of £215, being one-half year's interest on the principal sum of £8,600, after the rate aforesaid, at or upon the 25th day of March next ensuing, and the further sum of £8,815, being the whole principal money and one other half-year's interest thereon after the rate aforesaid, at or upon the 29th day of September next ensuing, between the hours of ten and eleven of the clock in the

Proviso for redemption.

(*d*) If the mortgage contained a trust for sale, say—

"and the trusts for sale in the said indenture contained;"

As to the most eligible mode of preparing transfers of mortgages:

(*e*) Where no further sum is advanced to the mortgagor, either the subsisting mortgage debt is kept on foot, and assigned to the transferree, (to whom a power of attorney to receive and recover it, as in the next precedent, should be given), or the estate is conveyed, discharged from the old, and subject to a new, proviso for redemption, and the mortgagor enters into fresh covenants with the transferree, as in the precedent in the text. Where the mortgagor does not concur, of course, the former is the only plan that can be adopted; but, where his concurrence can be obtained, the latter is the more usual, and is in general the preferable mode, as it avoids the necessity of assigning the debt, with power to the transferree to sue in the name of the transferror, which is always inconvenient. On the question whether, where a new proviso for redemption is limited, and new covenants for payment are entered into by the mortgagor, the instrument can properly be denominated a transfer of mortgage within the exemption from *ad valorem* stamp-duty contained in the statute of 3 Geo. 4, c. 117, *vide ante*, Vol. 5, p. 537.

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

forenoon of the said days respectively, without any deduction or abatement whatsoever for or in respect of any rates, taxes, [charges, assessments, and impositions whatsoever, now taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed upon the hereditaments hereinbefore expressed to be hereby granted and released, or any part thereof, or upon the said principal sum of £8,600, or the interest thereon, or upon the said [*transferree*], his heirs, executors, administrators, or assigns, for or in respect of the same or any part thereof, by authority of Parliament or otherwise howsoever], or on any other account whatsoever: Then, and in such case, and immediately after such payments shall be so made as aforesaid, he the said [*transferree*], his heirs and assigns, shall and will, upon the request, and at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, effectually convey and assure all and singular the said —— and hereditaments, with the appurtenances, unto and to the use of him the said [*mortgagor*], his heirs or assigns, or unto such other person or persons, and for such intents and purposes, as he or they shall direct, free from all incumbrances by him the said [*transferree*], his heirs, executors, administrators, or assigns, in the meantime to be made or done, (anything hereinbefore contained to the contrary thereof in anywise notwithstanding) (*f*).

Covenant by mortgagee that he has not encumbered.

AND the said [*transferror*] doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said [*transferree*], his heirs and assigns, that he the said [*transferror*] hath not at any time heretofore done, committed, or executed, or wittingly or willingly suffered, any act, matter, or thing, whatsoever, by means whereof the —— and hereditaments hereby released, or intended so to be, or any part thereof, are or is impeached, charged, or in any manner prejudicially affected in title, estate, or otherwise howsoever.

Covenants by mortgagor.

AND the said [*mortgagor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*transferree*], his heirs, executors, administrators, and assigns, in manner following, (that is to say), that the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall and will well and truly pay or

(*f*) If there be a trust for sale in default of payment, proceed *ut ante*, Vol. 5, p. 566.

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, at or in the common dining-hall, &c., the sum of £8,600 of lawful British money, &c., (*follow the terms of the proviso for redemption, not merely referring to that proviso*): *And also* (*g*), that they the said [*transferror*] and [*mortgagor*], or one of them, now are or is lawfully and absolutely seised of, or entitled to, the —— and hereditaments hereby released, or intended so to be, of a good, perfect, absolute, and indefeasible estate of inheritance in fee-simple in possession, [without any condition, reversion, remainder, trust, limitation, power of revocation, use or uses, or any other matter, restraint, or thing whatsoever, to defeat, alter, charge, change, revoke, make void, determine, or incumber the same]; *And also*, that they the said [*transferror*] and [*mortgagor*], or one of them, now have or hath, in themselves or himself, good right, full power, and lawful and absolute authority to grant, release, and convey the said —— and hereditaments unto and to the use of the said [*transferree*], his heirs and assigns, in the manner aforesaid, and according to the true intent and meaning of these presents: *And further*, that it shall be lawful for the said [*transferree*], his heirs and assigns, from time to time and at all times from and after default shall be made in payment of the said sum of £8,600 and interest, or any part thereof, contrary to the proviso hereinbefore contained, and the true intent and meaning of these presents, peaceably and quietly to enter into, have, hold, possess, and enjoy the —— and hereditaments hereby released, or intended so to be, and to receive the rents and profits thereof for his and their own use, without the lawful interruption or disturbance whatsoever of him the said [*transferror*] and [*mortgagor*], or either of them, their or his heirs or assigns, or any other person or persons whomsoever; *And* that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said [*mortgagor*], his heirs, executors, or administrators, well and sufficiently saved harmless and kept indemnified of, from, and against all and all manner of former and other estates, titles, charges, and incumbrances whatsoever: *And moreover*, that they the said [*transferror*] and [*mortgagor*],

That he and mortgagee stand seised;

and have right to convey;

For quiet enjoyment after default;

And for further assurance.

(*g*) As to covenants for title, see an observation, *ante*, p. 314.

2. IN FEE, OR FOR A TERM, WITH THE CONCURRENCE OF THE MORTGAGOR.

and each of them, and their respective heirs, executors, and administrators, and every other person having or lawfully claiming any estate, right, title, charge, trust, or interest, either at law or in equity, of, in, to, upon, or out of the —— and hereditaments hereby released, or intended so to be, or any part thereof, shall and will from time to time and at all times hereafter, upon every request of the said [*transferree*], his heirs, executors, administrators, or assigns, but at the costs and charges of the said [*mortgagor*], his heirs, executors, administrators, or assigns, so long as the equity of redemption under or by virtue of these presents shall be subsisting, and afterwards at the costs and charges of the said [*transferree*], his heirs or assigns, make, do, and execute, or cause to be made, done, and executed, all such further and other acts, conveyances, and assurances in the law whatsoever, for more perfectly, absolutely, and effectually conveying and assuring the same —— and hereditaments, with their appurtenances, unto and to the use of the said [*transferree*], his heirs and assigns, for ever, according to the true intent and meaning of these presents, as by him the said [*transferree*], his heirs, executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably devised and required.

Declaration that mortgagor shall enjoy until default.

AND *lastly, it is hereby declared and agreed*, that in the meantime, and until default shall be made in payment of the said sum of £8,600 and interest, or some part thereof, contrary to the proviso and covenant for the payment thereof respectively hereinbefore contained, it shall be lawful for the said [*mortgagor*], his heirs or assigns, peaceably and quietly to have, hold, and enjoy the —— and hereditaments hereby released, or intended so to be, and to receive the rents and profits thereof for his and their own use, without the lawful interruption, disturbance, or denial whatsoever of him the said [*transferree*], his heirs, executors, administrators, or assigns, or of any other person or persons lawfully claiming by, from, or under him or them. IN WITNESS &c.

3. TRANSFER *of* MORTGAGE *for a* TERM WITHOUT *the* CONCURRENCE *of the* MORTGAGOR (*a*). ASSIGNMENT *of* MORTGAGE-DEBT, *with Power to sue, &c.* (*Variation where* MORTGAGE *is in Fee*).

3. FOR A TERM, OR IN FEE, WHERE MORTGAGOR DOES NOT JOIN.

THIS INDENTURE, made &c., BETWEEN [*transferror*], of &c., of the one part; and [*transferree*], of &c., of the other part. WHEREAS, by indenture bearing date on or about the —— day of ——, and made between [*mortgagor*], of &c., of the one part; and the said [*transferror*], of the other part; in consideration of the sum of £2,000, paid by the said [*transferror*] to the said [*mortgagor*], He the said [*mortgagor*] Did grant, bargain, sell, and demise (*b*) unto the said [*transferror*], his executors, administrators, and assigns, *All that* (*describe parcels*), with their rights, members, and appurtenances; *To hold* the same unto the said [*transferror*], his executors, administrators, and assigns, for the term of five hundred years thenceforth ensuing, without impeachment of waste; *Subject, nevertheless,* to a proviso or condition therein contained for making void the same on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said [*transferror*], his executors, administrators, or assigns, of the sum of £2,000, with interest for the same after the rate of £5 per centum per annum, on the —— day of —— then next. And in the said indenture was contained a covenant on the part of the said [*mortgagor*] to pay the said principal sum and interest on or at the day or time hereinbefore mentioned for payment thereof. AND WHEREAS, by a certain bond or obligation in writing, under the hand and seal of the said [*mortgagor*], bearing even date with the hereinbefore-recited indenture, he the said [*mortgagor*] became bound to the said [*transferror*] in the penal sum of £4,000, subject to a condition thereunder

Parties.

Recital of mortgage;

—of bond.

(*a*) As to the precautions to be taken on the transfer of a mortgage, *vide ante*, Vol. 5, p. 496.

(*b*) If the mortgage is in fee, of course the recital will be varied accordingly.

3. FOR A TERM, OR IN FEE, WHERE MORTGAGOR DOES NOT JOIN.

written for making void the same on payment by the said [*mortgagor*], his heirs, executors, or administrators, to him the said [*transferror*], his executors, administrators, or assigns, of the sum of £2,000, with interest for the same after the rate and at the time therein and hereinbefore mentioned (being the same principal money and interest as were in part secured by the above-recited indenture). AND WHEREAS the said principal sum of £2,000 still remains due and owing to the said [*transferror*], by virtue of the hereinbefore-recited mortgage and bond, and interest thereon from the —— day of —— last, making together the sum of £2,025 (*c*). AND WHEREAS the said [*transferror*] having occasion for the said sum of £2,025, the said [*transferree*] hath agreed to advance the same to him upon having a transfer and assignment of the said mortgage-debt and securities made to him the said [*transferree*], in the manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £2,025 of lawful British money paid by the said [*transferree*] to the said [*transferror*], at or immediately before the sealing and delivery of these presents, the receipt whereof the said [*transferror*] doth hereby acknowledge, and therefrom doth release and discharge the said [*transferree*], his executors, administrators, and assigns, he the said [*transferror*] *Doth* by these presents bargain, sell (*d*), assign, and transfer, unto the said [*transferree*], his executors, administrators, and assigns, *All and singular* the —— and hereditaments comprised in

that principal money is due and interest from a certain day;

of agreement for transfer.

Testatum.

(*c*) Where the mortgagor does not join in the transfer, of course the suggestion (*ante*, p. 311), as to reciting the interest to be discharged up to the date does not apply. The precise amount of principal and interest due should be stated. It may be observed, that the suggestion referred to is also inapplicable where any part of the mortgage debt remains unpaid, as where several incumbrancers join in conveying to a purchaser, whose purchase-money is inadequate to pay them all in full; in such case the exact sum paid to each (on which, of course, depends the amount of the balance remaining unpaid) should be stated.

(*d*) If the mortgage is in fee, say—

Variation where mortgage is in fee.

"*Doth*, by these presents, bargain, sell, and release unto the said [*transferree*], his heirs and assigns, (in the actual possession, &c.), ALL AND SINGULAR the —— and hereditaments comprised in, and conveyed and assured by, the hereinbefore-recited indentures of lease and release or mortgage respectively, together with all rights," &c.

3. FOR A TERM, OR IN FEE, WHERE MORTGAGOR DOES NOT JOIN.

the hereinbefore-recited indenture of mortgage, and which are therein expressed to be thereby demised to the said [*transferror*], his executors, administrators, and assigns, for the term of five hundred years as aforesaid, together with their and every of their rights, members, and appurtenances; AND ALL the estate, right, title, interest, trust, term of years yet to come and unexpired, property, claim, and demand whatsoever, at law and in equity, of him the said [*transferror*], in, to, or upon the same and every part thereof; *And also*, all deeds, evidences, and writings whatsoever relating to or concerning the same hereditaments and premises, or any part thereof, which he the said [*transferror*] now hath in his custody or possession, or can or may obtain without suit at law or in equity: TO HAVE AND TO HOLD the said —— and all and singular other the hereditaments hereinbefore expressed to be (*e*) hereby assigned unto the said [*transferree*], his executors, administrators, and assigns, henceforth during all the residue and remainder now unexpired of the said term of five hundred years therein, and for all other the estate, term, and interest of the said [*transferror*] therein (*f*), *Subject, nevertheless*, to such right or equity of redemption, (if any), on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, of the said sum of £2,000 and interest, as is or may be now subsisting under or by virtue of the hereinbefore-recited indenture of mortgage. AND THIS INDENTURE FURTHER WITNESSETH, that, for the consideration aforesaid, he the said [*transferror*] *Doth*, by these presents, bargain, sell, assign, and transfer unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the principal sum of £2,000 secured by the hereinbefore-recited indenture of mortgage and bond respect-

And all the estate, &c.

Habendum.

Subject to subsisting equity of redemption.

Further *testatum.*

Transferror assigns to transferree mortgage and bond debt.

(*e*) If the mortgage is in fee, say—

"hereby released unto the said [*transferree*], his heirs and assigns, To THE USE of the said [*transferree*], his heirs and assigns, for ever, subject" &c., *ut supra.*

(*f*) It is prudent always to add these words, in assigning a term, to guard against the possible effect of any mis-recital of the deed creating it, &c. [But this precaution will only be available where the parcels are identified by an independent description in the deed of assignment, and not where, as in the text, they are merely described as the parcels comprised in the deed creating the term.]

3. FOR A TERM, OR IN FEE, WHERE MORTGAGOR DOES NOT JOIN.

ively, and the interest now due as aforesaid, and hereafter to become due thereon, and also the hereinbefore-recited bond, and all other securities for the said principal sum and interest, and all benefit and advantage thereof respectively; *And also*, all the right, title, interest, property, claim, and demand whatsoever, at law and in equity, of him the said [*transferror*], of, in, to, or out of the same and every part thereof; To HAVE, receive, take, and enjoy the said principal sum and interest, bond or obligation, and all other the premises lastly hereinbefore expressed to be hereby assigned unto and by the said [*transferree*], his executors, administrators, and assigns, as and for his and their own proper goods and chattels, for ever. AND for the better enabling the said [*transferree*], his executors, administrators, or assigns, to recover and receive the sum of £2,000 hereby assigned, and the interest thereon, He the said *transferror*], *Doth*, by these presents, constitute and appoint the said [*transferree*], his executors and administrators, the true and lawful attorney and attorneys irrevocable of him the said [*transferror*], for him and his name, or in the name or names of his executors or administrators, but for the benefit and at the costs and risk of him the said [*transferree*], his executors, administrators, or assigns, to ask, demand, and recover, by all lawful ways and means, of and from the said [*mortgagor*], his heirs, executors, or administrators, and all and every other person and persons liable to pay the same, the sum of £2,000, secured by the said bond and covenant of him the said [*mortgagor*], as aforesaid, and all interest now due, and hereafter to grow due, for the same; And in case of non-payment thereof, or of any part thereof, to commence and prosecute such actions or suits at law or in equity for the recovering the same as shall be thought expedient; and on payment or receipt thereof, or of any part thereof, to give sufficient releases and discharges for the same; and for the purposes aforesaid, the said [*transferror*] doth hereby grant unto the said [*transferree*], his executors or administrators, power and authority to appoint a substitute or substitutes, and such substitution from time to time at pleasure to revoke (*g*); and doth hereby ratify and

Habendum.

Power of attorney.

(*g*) If the transferree has occasion to transfer the mortgage, he should appoint his transferree his substitute under this power, giving such transferree a similar power of substitution.

confirm all and whatsoever the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, shall lawfully do or cause to be done in the premises by virtue of these presents; AND the said [*transferror*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*transferree*], his executors, administrators, and assigns, in manner following, that is to say, That he (*has not incumbered the said hereditaments, ut ante*, p. 313); *And also*, that he the said [*transferror*], hath not received the said principal sum of £2,000 and interest hereinbefore expressed to be hereby assigned, or any part thereof; *And that* the said [*transferror*], his executors or administrators, will not nor shall at any time hereafter revoke or attempt to revoke the power or authority hereinbefore contained, or disavow, discontinue, release, or discharge any action, suit, judgment, or execution, to be brought, prosecuted, or obtained by the said [*transferree*], his executors, administrators, or assigns, by virtue thereof, without the consent in writing of him the said [*transferree*], his executors, administrators, or assigns, or the rule, order, or decree of some court of law or equity; AND the said [*transferree*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*transferror*], his executors, and administrators, that he the said [*transferree*], his heirs, executors, or administrators, will at all times hereafter save harmless and keep indemnified the said [*transferror*], his executors and administrators, and his and their lands and tenements, goods and chattels, from and against all and all manner of costs, damages, losses, and expenses whatsoever, which shall or may at any time hereafter be paid or sustained by him or them for or by reason of any action or actions, or suit or suits, which shall or may be brought or prosecuted in the name or names of the said [*transferror*], his executors or administrators, under or by virtue of the power or authority hereinbefore contained in that behalf, or in any manner relating thereto, except such costs, damages, losses, and expenses only as shall or may happen by or through the wilful default or neglect of him the said [*transferror*], his executors or administrators. IN WITNESS &c.

3. FOR A TERM, OR IN FEE, WHERE MORTGAGOR DOES NOT JOIN.

Covenant by transferror that he has not incumbered,

has not received debt,

and will not release debt, actions, &c.

Covenant by transferree to indemnify transferror by reason of any action that shall be brought in his name.

4. BY APPOINTMENT IN FEE.

4. CONVEYANCE, *on* TRANSFER *of* MORTGAGE, *by way of* APPOINTMENT (*a*), *the Debt being transferred by the Indorsement of a Promissory Note.* (*A very concise Form*).

THIS INDENTURE, made the —— day of ——, 18—,

Parties. BETWEEN [*transferror*], of &c., of the one part; and [*transferree*], of &c., of the other part.

Recital of mortgage, WHEREAS, by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, made between [*mortgagor*], of &c., of the one part; and the said [*transferror*], of the other part; in consideration of the sum of £100, lent by the said [*transferror*] to the said [*mortgagor*], the said [*mortgagor*], conveyed and assured (*describe parcels*) *To such uses*, and for such estates, intents, and purposes, as the said [*transferror*], by any deed or deeds, to be attested or not, should appoint; and in default of such appointment, *To the use* of the said [*transferror*], his heirs and assigns, for ever, *Subject, nevertheless,* to redemption, on payment by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*transferror*], his executors, administrators, or assigns, of the sum of £100, and interest at the rate of £5 per centum per annum, on the —— day of —— then next, according to the tenor of a certain promissory note, bearing even date with the said indenture, and made by the said [*mortgagor*], for the sum of £100 and interest, payable to the said [*transferror*] or his order six months after the date thereof;

—and promissory note bearing even date therewith.

—Of principal and interest due. AND WHEREAS there is now owing to the said [*transferror*], on

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Remarks upon the precedent in the text. (*a*) This precedent is somewhat novel. It is framed in conformity to a suggestion made in a former note, (*vide ante*, p. 188), as to giving to a mortgagee a power of appointment. The debt, being due upon a promissory note, is transferable, even *at law*, by the indorsement of the note; so that the usual power to sue is unnecessary. At a time when a notion is commonly imbibed of the complexity of our present system of conveyancing, it may be useful to shew how short and simple, even under this system, conveyances may be rendered, and thereby to weaken the arguments for encountering the evils consequent on any violent change.

his said security, the said principal sum of £100, and interest thereon from the —— day of —— last, making together the sum of 101*l.* 5*s.*: AND WHEREAS the said [*transferree*] has agreed to advance to the said [*transferror*] the said sum of 101*l.* 5*s.*, on having a transfer of the said mortgage-debt, and a conveyance of the said mortgaged hereditaments made to him; and accordingly the said [*transferror*] has this day indorsed to the said [*transferree*] the said promissory note of the said [*mortgagor*]. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said sum of 101*l.* 5*s.*, paid by the said [*transferree*] to the said [*transferror*] at or immediately before the execution of these presents, the receipt whereof the said [*transferror*] doth hereby acknowledge, and therefrom doth absolutely discharge the said [*transferree*], his heirs, executors, administrators, and assigns; the said [*transferror*], in execution of his said power, and of all other powers enabling him in this behalf, *Doth*, by these presents, absolutely and irrevocably direct, limit, and appoint, that all and singular the —— and hereditaments hereinbefore described, and all other the hereditaments comprised in and assured by the hereinbefore-recited indentures of lease and release, or either of them, with their appurtenances, shall henceforth remain, continue, and be TO SUCH USES, and for such estates, intents, and purposes, as the said [*transferree*], by any deed or deeds, to be attested or not, shall appoint; and, in default of such appointment, TO THE USE of the said [*transferree*], his heirs and assigns for ever; subject, nevertheless, to such equity of redemption (if any) as the said hereditaments are subject and liable to under or by virtue of the hereinbefore-recited indenture of mortgage. AND the said [*transferror*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*transferree*], his appointees, heirs, executors, administrators, and assigns, that the said sum of 101*l.* 5*s.* is now due and owing to the said [*transferror*], as hereinbefore recited (*b*); *And that* he the said [*transferror*] hath not

4. BY APPOINTMENT IN FEE.

—Of agreement for transfer, and indorsement of note.

Testatum.

In consideration of principal and interest moneys transferror appoints,

Premises comprised in recited deed.

To such uses as transferree shall appoint,

and in default to him in fee.

Covenants by transferror.

(*b*) When the mortgagor does not join, this seems to be a proper covenant. It is not usual to make the transferror covenant for further assurance; but there seems to be no reason why a person who professes to make an assurance, and who receives a valuable consideration for it, should not contract to do all necessary acts in confirmation of such assurance.

4. BY APPOINTMENT IN FEE.

done, executed, or permitted any act or deed, by means whereof the said mortgage debt hereby intended to be assigned, and the said hereditaments hereby intended to be appointed, or any part thereof respectively, are or is incumbered or prejudicially affected in any manner howsoever; *And that* he the said [*transferror*], his heirs, executors, or administrators, will at all times hereafter, on the request, and at the costs of the said [*transferree*], his appointees, heirs, executors, administrators, or assigns, execute all such further acts and assurances for more effectually conveying and assuring the hereditaments hereby appointed, or intended so to be, to the uses and in the manner aforesaid, according to the tenor and intent of these presents, and also for vesting the said mortgage debt in the said [*transferree*], his executors, administrators, or assigns, as he the said [*transferree*], his appointees, heirs, executors, administrators, or assigns, shall or may reasonably require. IN WITNESS &c.

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5. OF LEASEHOLDS WHERE A FARTHER SUM IS ADVANCED.

5. TRANSFER *of* MORTGAGE *of* LEASEHOLDS *with a* POWER *of* SALE, *where a small* FARTHER SUM *is advanced to the* MORTGAGOR. (*Variation, where the original Mortgage was by Underlease* (*a*); *also, where part of the new Loan is applied in* LIQUIDATION *of an* ARREAR *of* INTEREST *on the subsisting Debt*). (*A short Form*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*transferror*], of &c., of the first part; [*mortgagor*], of &c., of the second part; and [*transferree*], of &c., of the third part;

Recital of mortgage,

WHEREAS (*recite mortgage for securing* £385 *and interest, and the default made in payment*). AND WHEREAS there is now owing to the said [*transferror*], by virtue of the above-recited mortgage security, the said principal sum of £385, but all interest for the same has been paid up to the day of the date hereof, as the said [*trans-*

Variations where mortgage was by underlease.

(*a*) Where the mortgage was by underlease, and not by assignment, the words in italics, throughout the precedent, should be omitted, and the variation, if any, in the notes substituted. In some instances, the alteration consists simply in the omission of such words.

ferror] doth hereby acknowledge (*b*). AND WHEREAS the said [*transferror*], having required payment of his said principal sum, the said [*mortgagor*] hath prevailed upon the said [*transferree*] to advance the sum of £400 at interest, on the security of the said leasehold premises, in manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £385 of lawful money of Great Britain and Ireland, paid by the said [*transferree*], (by the direction of the said [*mortgagor*], testified by his executing these presents), to the said [*transferror*], at or immediately before the execution of these presents, in full satisfaction of all principal and interest moneys due to him on the security of the said recited indenture of mortgage of the —— day of ——, and also in consideration of the further sum of £15 of like lawful money at the same time paid by the said [*transferree*] to the said [*mortgagor*], the receipt of which said sums of £385 and £15 (making, together, the sum of £400, so agreed to be lent and advanced as aforesaid) the said [*transferror*] and [*mortgagor*] hereby respectively acknowledge, and from the same respectively hereby respectively release and for ever discharge the said [*transferree*], his executors, administrators, and assigns, the said [*transferror*], by the direction of the said [*mortgagor*], testified as aforesaid, *Doth* by these presents bargain, sell, assign, and transfer, and the said [*mortgagor*] *Doth* grant, ratify, and confirm unto the said [*transferree*], his executors, administrators, and assigns, ALL THOSE the several —— and hereditaments, and all and singular other the premises comprised in the above-recited indenture of mortgage, and thereby assigned (*c*), or intended

5. OF LEASEHOLDS WHERE A FARTHER SUM IS ADVANCED.

—agreement for loan.

Testatum.

In consideration of sum paid to transferror and mortgagor.

Transferror, by direction of mortgagor, assigns.

Parcels.

(*b*) When part of the newly raised loan is to be applied in liquidation of an arrear of interest due on the existing mortgage, and it is deemed advisable to state the fact, instead of the recital in the text, say—

"WHEREAS the said principal sum of £350 is now owing to the said [*transferror*] by virtue of the said recited mortgage security, with interest thereon from the —— day of —— last, amounting to the sum of £35, which two several sums of £350 and £35 make together the sum of £385."

Variation in recital as to interest.

If there is reason to doubt the capacity of the mortgagor, in consequence of a secret act of bankruptcy, or otherwise to create a fresh charge, it would be prudent to shew the whole extent of the payment made to the mortgagee for interest.

(*c*) "demised"

5. OF LEASEHOLDS WHERE A FARTHER SUM IS ADVANCED.

All the estate.

Habendum.

Proviso for redemption.

so to be, together with all the rights, members, and appurtenances thereunto belonging. And also all the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of the said [*transferror*] *and* [*mortgagor*], *and each of them*, in, to, or out of the said premises, with their appurtenances; To HAVE AND TO HOLD the —— hereinbefore described, and other the premises hereby assigned or otherwise assured, or intended so to be, unto the said [*tranferree*], his executors, administrators, and assigns, henceforth for all the residue now unexpired of the term of —— years granted by the above-recited indenture of *lease* (*d*) of the —— day of ——, and for all other the estate, term, and interest of the said [*transferror*] *and* [*mortgagor*] *respectively* therein, freed and discharged from the aforesaid proviso or condition for redemption contained in the hereinbefore-mentioned indenture of mortgage, and all equity of redemption by virtue thereof, but subject to the proviso or agreement for redemption of the said premises hereinafter contained; (*covenant by transferror that he has not incumbered*): PROVIDED ALWAYS, and it is hereby declared and agreed, that if the said [*mortgagor*], his heirs, executors, or administrators, should pay unto the said [*transferree*], his executors, administrators, or assigns, the said principal sum of £400, with interest thereon at the rate of £5 per cent. per annum, without deduction, on the —— day of —— next, *and shall in the meantime duly observe and perform all the covenants contained in the hereinbefore-recited indenture of lease on the lessee's part henceforth to be observed and performed* (*e*), then, and immediately thereupon, the said [*transferree*], his executors, administrators, or assigns, shall, on the request and at the costs of the said [*mortgagor*], his executors, administrators, or assigns, *assign* (*f*) and assure unto him or them, or in such other manner as he or they shall direct, the —— and premises hereby assigned, for all the residue of the said term of —— years which shall be then unexpired therein, free from all incumbrances

(*d*) "mortgage"

(*e*) As a mortgagee-assignee is liable to the covenants from the time of the assignment, these words seem, in the present case, proper to be introduced into the proviso for redemption, but are, by parity of reason, improper when the mortgage is by way of underlease.

(*f*) If the mortgage is by way of underlease, say, instead of "assign"—"surrender."

5. OF LEASEHOLDS WHERE A FARTHER SUM IS ADVANCED.

Power of sale in default of payment, &c.

created by the said [*transferree*], his executors, administrators, or assigns, in the meantime: PROVIDED ALSO, and it is hereby declared and agreed, that in case default shall be made by the said [*mortgagor*], his heirs, executors, or administrators, in payment unto the said [*transferree*], his executors, administrators, or assigns, of the said principal sum of £400 and interest at the time hereinbefore appointed for payment thereof, or in paying the rent reserved by the hereinbefore-recited indenture of lease for the space of —— days after any portion thereof shall have accrued due, or in observing or performing any or either of the covenants (other than the covenant for payment of rent) contained in the said indenture, and which, on the part of the lessee therein named, his executors, administrators, or assigns, ought to be observed and performed (*g*), then, and in either of the said cases, and immediately thereupon, it shall be lawful for the said [*transferree*], his executors, administrators, or assigns, without the concurrence of the said [*mortgagor*], his executors, administrators, or assigns, to sell and absolutely dispose of the premises hereby assigned, or any part of the same respectively, either together or in parcels, and either by public auction or private contract, (with liberty to buy in the premises at any auction, and rescind or vary any contract), and to assign and to assure the same premises when sold unto the pur-

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(*g*) Even if the mortgage is by way of underlease, so that the mortgagee cannot become *personally* liable to the rents and covenants of the lease, it seems proper to extend the power of sale to this event, since the value of the security would of course be impaired by the neglect to perform the covenants. Sometimes, instead of the power of sale being to arise on the non-performance of the covenants of the lease, it is to arise on the non-performance of the covenants in the mortgage; and as these include a covenant to perform the covenants of the lease, it is unnecessary to refer expressly to the latter covenants. The making the power of sale exercisable on breach of covenant generally, is often advisable, particularly where a long time is allowed for payment of the money, and important covenants are in the meantime to be performed by the mortgagor, as the covenant to insure, &c. It will then stand thus—

Suggestion as to making power of sale arise on breach of covenants in lease.

"or in case default shall be made by the said [*mortgagor*], his executors, administrators, or assigns, in performing any or either of the covenants on his part contained in these presents, then," &c.

5. OF LEASEHOLDS WHERE A FARTHER SUM IS ADVANCED.

chaser or purchasers thereof, his, her, or their executors, administrators, or assigns; AND out of the money to arise from such sale or sales, and the rents and profits of the said premises in the meantime, in the first place to retain unto himself and themselves, the said [*transferree*], his executors, administrators, or assigns, the costs and expenses of and incident to the said sale or sales, or incurred in the payment of the rent and performance of the covenants reserved and contained by and in the hereinbefore-recited indenture of lease, on the lessee's part to be paid and performed (*h*), and otherwise in the execution of this present power, with interest for the same after the rate aforesaid, from the time of the payment of the same costs and expenses respectively; and in the next place to retain to himself and themselves, the said [*transferree*], his executors, administrators, or assigns, the said principal sum of £400 and interest, or so much thereof as shall then remain unpaid, and also all costs and expenses which he or they shall have incurred by reason of the non-payment thereof; and then to pay the residue (if any) of the said moneys which shall come to his or their hands, by virtue of the power hereinbefore contained, unto the said [*mortgagor*], his executors, administrators, or assigns; *Provided nevertheless,* and it is hereby declared, that the principal money to be ultimately recoverable by means of this security, so far as the ad valorem duty on mortgages is by law payable in respect thereof, shall not exceed the sum of £——; *Provided also,* and it is hereby further declared, that every receipt which shall be given by the said [*transferree*], his executors, administrators, or assigns, to the purchaser or purchasers of the said premises, for his, her, or their purchase-money or to any tenant or tenants, for rent received from him or them, shall effectually discharge such purchaser or purchasers, or tenant or tenants, from all responsibility in respect of the application of the same. *And that* every sale which shall be made, and every deed of assignment which shall be executed by the said [*transferree*], his executors, administrators, or assigns, shall be binding on the said [*mortgagor*], his executors, administrators, or assigns; and that the purchaser or purchasers of the said pre-

Application of moneys arising from sale.

Limitation of principal sum.

Transferrees' receipts to be good discharges.

Sales to be binding on mortgagor.

(*h*) Consistently with the variation *ante*, p. 333, say—

"or in the performance of any act, matter, or thing hereby covenanted to be performed by the said [*mortgagor*]."

mises shall not be obliged to inquire whether any sale or sales is or are necessary or proper for any of the purposes hereinbefore expressed, nor shall be affected by express notice that such sale or sales is or are unnecessary or improper: PROVIDED ALSO, and it is hereby declared, that the power of sale hereinbefore contained shall not prejudice the right of the said [*transferree*], his executors, administrators, or assigns, to proceed to a foreclosure of the equity or right of redemption of the said premises, or otherwise abridge or affect his or their rights and remedies as a mortgagee or mortgagees thereof; AND the said [*mortgagor*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*transferree*], his executors, administrators, and assigns, That he the said [*mortgagor*], his heirs, executors, or administrators, will pay unto the said [*transferree*], his executors or administrators, the said sum of £400 and interest thereon at the rate of £5 per centum per annum, on the —— day of —— next, without any deduction whatsoever; And that the said [*transferror*] and [*mortgagor*] now have in themselves, or one of them hath in himself, good right and full power to assign the said premises in manner aforesaid, according to the true intent and meaning of these presents; And that the said yearly rent of £——, and the covenants and conditions reserved and contained by and in the hereinbefore-recited indenture of lease, and on the lessee's part to be respectively paid and performed, have been duly paid and performed by the said [*mortgagor*] up to the day of the date of these presents; And also, that if default shall be made by the said [*mortgagor*], his heirs, executors, or administrators, in the performance of the proviso for redemption hereinbefore contained, it shall be lawful for the said [*transferree*], his executors, administrators, or assigns, to enter into and to hold and enjoy the said premises for all the term and interest therein respectively hereby assigned, without any interruption or disturbance whatsoever from or by any person or persons whomsoever, other than and except the person or persons whose estate and interest is hereinafter excepted; And that free and clear of and from all and all manner of incumbrances whatsoever, (except the rents and covenants respectively reserved and contained by and in the hereinbefore in part recited indenture of lease, which on the lessee's part ought henceforth to be paid and performed); *And further*, that he the said [*mortgagor*] and every other person who-

5. OF LEASEHOLDS WHERE A FARTHER SUM IS ADVANCED.

Transferree's remedies as mortgagee not to be affected.

Covenants by mortgagor, to pay mortgage-money.

—That he and transferror have right to assign, &c.

—For quiet enjoyment after-default.

Free from incumbrances.

And for further assurance.

5. OF LEASEHOLDS WHERE A FARTHER SUM IS ADVANCED.

soever lawfully claiming any estate, charge, or interest in, to, or out of the said premises (except the person or persons claiming in respect of the rent and covenants hereinbefore excepted), will at all times hereafter, upon the request of the said [*transferree*], his executors, administrators, or assigns, but at the costs of the said [*mortgagor*], his heirs, executors, or administrators, until the said premises shall have been sold and assigned under the power hereinbefore contained, and after such sale and assignment, then at the costs of the purchaser or purchasers, his, her, or their executors, administrators, or assigns, execute, or procure to be executed, all such further acts and assurances in the law whatsoever, for the more perfectly assuring and confirming the same premises unto the said [*transferree*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said [*transferree*], his executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably required; (*Add, if so intended, covenant by mortgagor to keep up policy of insurance, and, in default, that mortgagee shall be at liberty to do so, ut ante,* Vol. 5, p. 639);

Lastly, to pay rent and perform covenants of lease.

And lastly, that the said [*mortgagor*], his executors, administrators, or assigns, will henceforth, during so long as the said term of —— years shall be subsisting, and any sum of money shall remain owing upon this security, and the said [*mortgagor*], his executors, administrators, or assigns, shall be in the possession of the said leasehold premises, or in the receipt of the rents thereof, pay the yearly rent by the said indenture of lease reserved, and perform all the covenants and agreements in the said indenture contained, which ought henceforth on the lessee's part to be paid and performed: PROVIDED ALSO, and it is lastly hereby declared,

Proviso for quiet enjoyment by mortgagor until default.

that, until default shall be made by the said [*mortgagor*], his heirs, executors, administrators, or assigns, in the performance of the proviso for redemption hereinbefore contained, it shall be lawful for him, his executors, administrators, and assigns, to enjoy the said premises hereby assigned, without any interruption or disturbance by the said [*transferree*], his executors, administrators, or assigns; but nevertheless, it is declared, that nothing in this proviso contained shall extend to the prejudice of any purchaser. IN WITNESS &c.

6. TRANSFER *of* MORTGAGE (*a*) *of Leaseholds by the* EXECUTOR *and* LEGATEE *of the* MORTGAGEE, *with the* CONCURRENCE *of the* MORTGAGOR, *the old Mortgage being by Assignment, and the new Mortgage by way of underlease.*

6. TRANSFER BY CREATION OF UNDERLEASE.

THIS INDENTURE, made the —— day of ——, BETWEEN [*executor of deceased mortgagee*]; of &c., of the first Parties.

(*a*) This precedent is appropriate to a case in which the original mortgagee was *assignee* of the lease; but it is intended that the new mortgagee shall take an underlease only, in order to avoid liability to the rent and covenants of the lease. This might be effected either by revesting the property in the mortgagor by assignment, and then making him grant an underlease to the new mortgagee, reserving an inconsiderable reversion, or by making the present mortgagee grant a derivative term to the new mortgagee, and assign the remainder of his term to the mortgagor. The latter is the preferable course, because, by preventing the property from vesting in the mortgagor, the danger arising from secret bankruptcy, or any other disability by which his conveyance might be affected, is avoided. The present deed has therefore been prepared in that form. Though the precedent is classed with transfers of mortgages, in conformity to popular phrase, (that term being commonly applied to all transactions in which the money advanced by the new mortgagee is applied in liquidation of a subsisting mortgage debt), yet it is, more properly speaking, a new mortgage. The derivative term indeed, which is vested in the new lender, is drawn out of the old mortgagee's estate, but this seems to make no substantial distinction. The material fact is, that the estate is *subject to a new proviso for redemption*, which in effect constitutes it a new mortgage. It will be proper, therefore, to stamp the deed as a mortgage, even if it should be thought probable, as suggested in another place, that an instrument of this kind would be considered as a transfer of mortgage, within the meaning of the stamp act, since a difference of opinion exists upon the point, (*vide ante*, Vol. 5, p. 537). Where the parties are anxious to avoid the stamp, the mortgage should be transferred subject to the subsisting equity of redemption, and a covenant by the mortgagor added to pay the debt; of which an example will be given in the next precedent. By leaving the equity of redemption undisturbed, instead of limiting a new proviso for redemption, as in the present case, the ground upon which the *ad valorem* stamp might be contended to attach is removed, for the instrument is in strict propriety a transfer of mortgage only; and by adding, as suggested, a covenant by the mortgagor for payment, it becomes unnecessary to authorize the

Remarks upon the precedent in the text.

6. TRANSFER BY CREATION OF UNDER-LEASE.

part; [*specific legatee of deceased mortgagee*], of &c., of the second part; [*mortgagor*], of &c., of the third part; and [*transferree*], of &c., of the fourth part: WHEREAS, (*recite lease to mortgagor as in former precedents*); AND WHEREAS, by indenture of mortgage bearing date on or about the —— day of ——, made between the said [*mortgagor*], of the one part, and [*testator*], of &c., of the other part, in consideration of the sum of £400 then paid and advanced by the said [*testator*] to the said [*mortgagor*], the said [*mortgagor*] assigned to the said [*testator*], his executors, administrators, and assigns, all and singular the —— and premises comprised in the hereinbefore-recited indenture of lease, *To hold* the same unto the said [*testator*], his executors, administrators, and assigns, for all the residue then unexpired of the said term of —— years, granted by the said indenture of lease; subject, nevertheless, to the yearly rent, and the lessee's covenants respectively reserved and contained by and in the said indenture thenceforth to be paid and performed; and subject also to a proviso for redemption on payment by the said [*mortgagor*], his heirs, executors, or administrators, to the said [*testator*], his executors, administrators, or assigns, of the sum of £400 and interest, on the —— day of —— then next ensuing; AND WHEREAS default was made in payment of the said principal and interest moneys at

Recital of lease to mortgagor. —of mortgage.

—that default was made in payment.

transferree to sue in the name of the transferror. The giving such powers is always to be avoided, when possible; they are attended with inconvenience to the person receiving, and with danger to the person giving them, and are particularly objectionable where the constituent party is an executor in trust, who having no beneficial interest, is of course reluctant to incur the hazard of allowing his name to be used for the purpose in question, though his risk is somewhat less with regard to costs than that of a plaintiff suing in his own right. The direct course, therefore, for the executor of a mortgagee to pursue is, to call in the money, and, if the mortgagor procures another lender, to require that the existing debt be cancelled, and a fresh covenant accepted by the new creditor. And it may be observed, that, where the mortgage debt is specifically bequeathed, the executor, even after assent, is still the proper person to sue *for the debt*, *Canham* v. *Rust*, 2 J. B. Moore, 164, and therefore would be the party to give the authority in question, though the legal as well as the equitable title *to the term*, may have become vested by the assent in the legatee, as in the present case. To prevent this inconvenient consequence, the legatee is sometimes appointed executor *quoad* the debt.

As to the extent of the power of selling and mortgaging possessed by executors, *vide ante*, Vol. 5, p. 177.

6. TRANSFER BY CREATION OF UNDER-LEASE.

the time so as aforesaid appointed for the payment thereof; AND WHEREAS the said [*testator*] departed this life on the —— day of ——, having by his last will and testament in writing, bearing date on or about the —— day of ——, bequeathed the said principal sum of £—— secured to him by the hereinbefore-recited indenture of mortgage, and all his estate and interest in the said mortgaged premises, unto the said [*legatee*], his executors, administrators, and assigns, for his and their own and absolute use and benefit; and, of his said will, appointed the said [*executor*] sole executor, who, soon after the decease of the said [*testator*], proved the same in the Prerogative Court of the Archbishop of Canterbury; AND WHEREAS the said [*executor*], finding the general personal estate of the said [*testator*] to be fully adequate to the payment of all the debts owing by him, so far as the same have come to the knowledge of the said [*executor*], assented to the said bequest to the said [*legatee*], and permitted him to receive the interest from time to time accruing on the said principal sum, but hath not assigned the same, nor otherwise formally testified his assent to the said recited legacy; AND WHEREAS the said principal sum of £400 is now due and owing by virtue of the hereinbefore-recited indenture of mortgage, but all interest thereon has been paid by the said [*mortgagor*] up to the day of the date hereof, as the said [*legatee*] doth hereby acknowledge; AND WHEREAS the said [*legatee*] is desirous of receiving his said principal money, and hath applied to the said [*mortgagor*] to pay the same, and he being unable so to do hath requested the said [*transferree*] to lend and advance the sum of £400 at interest on the security of the said mortgaged premises, in order to enable him to pay off and discharge the mortgage debt so owing to the said [*legatee*]; AND WHEREAS, for the purpose of carrying into effect the above-recited arrangment, it has been agreed by and between all the said parties hereto, that the said premises shall be demised, assigned, and assured in manner hereinafter expressed; AND WHEREAS the said [*executor*], at the request of the said [*legatee*], and for the satisfaction of the other parties hereto, hath agreed to join in these presents, for the purpose of testifying his assent to the hereinbefore-recited bequest to the said [*legatee*], and for other the purposes hereinafter expressed.

—of testator's death and will.

—that executor had assented to the bequest.

—that principal sum remains due.

—that legatee has called in his money, and transferree has agreed to advance.

Agreement to demise and assign as after contained.

That executor agrees to join.

NOW THIS INDENTURE WITNESSETH, that, in *Testatum.*

6. TRANSFER BY CREATION OF UNDER-LEASE.

pursuance of the said agreement, and in consideration of the sum of £400 of lawful money of Great Britain and Ireland, paid by the said [*transferree*] to the said [*legatee*], at or immediately before the execution of these presents, by the direction of the said [*mortgagor*], and with the consent of the said [*executor*], testified by their severally executing these presents, in full satisfaction of all moneys due or owing to the said [*legatee*] on the security of the above-recited indenture of mortgage of the —— day of ——, the receipt of which said sum of £400 the said [*legatee*] doth hereby acknowledge, and from the same the said [*legatee*] and [*executor*] respectively do hereby acquit, release, and for ever discharge the said [*transferree*], his executors, administrators, and assigns, and also the said [*mortgagor*], his heirs, executors, and administrators; the said [*legatee*], and, at his request, the said [*executor*], by the direction of the said [*mortgagor*], testified as aforesaid, by way of assurance only and not of warranty (*b*), *Do*, and each of them *Doth*, by these presents, bargain, sell, and demise, and the said [*mortgagor*] *Doth* ratify and confirm, unto the said [*transferree*], his executors, administrators, and assigns, ALL THOSE the —— and premises hereinbefore described, and all and singular other the premises (if any) comprised in the above-recited indenture of mortgage, and thereby assigned, or intended so to be, together with all the rights, members, and appurtenances thereunto belonging; *And also*, all deeds, evidences, and writings relating to the said premises now in the custody of the said [*legatee*] and [*executor*] respectively; TO HAVE AND TO HOLD the said hereditaments and other the premises hereby demised, or intended so to be, with the appurtenances, unto the said [*transferree*], his executors, administrators, and assigns, henceforth for all the residue now unexpired of the said term of 80 years, granted by the above-recited indenture of lease of the —— day of ——, and so assigned to the said [*testator*] as aforesaid, except the last day of the said term, freed and dis-

In consideration of 400*l.* paid by transferree to legatee,

Legatee, and, by his direction, executor, demise, and mortgagor confirms,

Parcels,

And all deeds.

Habendum to transferree for residue of term, except the last day.

As to words negativing warranty.

(*b*) As words of demise have been held to create an implied warranty, the introduction of these qualifying words might, with some plausibility, be required, on the part of the mortgagees, though there can be little doubt that the fact of the grantors entering into the usual trustees' covenant, that they have done no act to incumber, would be sufficient to repel the implied warranty. Indeed, the point has been so decided. [*See Noke's case*, 4 Rep. 80 b.; *Line* v. *Stephenson*, 6 Scott, 447.]

charged from the aforesaid proviso or condition for redemption contained in the above-recited indenture of mortgage, and from all right of redemption by virtue thereof, but subject to the proviso for redemption hereinafter contained.

6. TRANSFER BY CREATION OF UNDER-LEASE.

AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations hereinbefore expressed, and also in consideration of the sum of 10*s.* paid by the said [*mortgagor*] to each of them, the said [*legatee*] and [*executor*], at or immediately before the execution of these presents, the receipt whereof is hereby acknowledged, he the said [*legatee*], and at his request, testified as aforesaid, the said [*executor*] *Do*, and each of them *Doth*, by these presents, assign and transfer unto the said [*mortgagor*], his executors, administrators, and assigns, ALL THOSE —— and premises hereinbefore described, and all other the premises (if any) comprised in and assigned by the hereinbefore-recited indenture of mortgage, and all and singular the rights, members, and appurtenances to the said premises, or any part thereof, belonging or appertaining, or therewith usually held and enjoyed: And all the estate, right, title, interest, term or terms of years, benefit, claim, and demand whatsoever, both at law and in equity of the said [*legatee*] and [*executor*] respectively, in, to, and out of the said premises; TO HAVE AND TO HOLD the said —— and other the premises hereby assigned, or intended so to be, unto the said [*mortgagor*], his executors, administrators, and assigns, henceforth for all the residue now unexpired of the term of eighty years granted by the hereinbefore-recited indenture of lease of the —— day of ——; and for all other the estate, term, and interest (if any) of them the said [*legatee*] and [*executor*] respectively, in or to the said premises or any part thereof, subject, nevertheless, to the payment of the rent and the performance of the covenants, conditions, and agreements, respectively reserved and contained by and in the above-recited indenture of lease, and which, on the part of the lessee, his heirs, executors, administrators, or assigns, ought henceforth to be paid and performed, and also subject and without prejudice to the demise or underlease hereinbefore granted by the said [*legatee*] and [*executor*], by the direction of the said [*mortgagor*], to the said [*transferree*], his executors, administrators, and assigns; AND the said [*legatee*], for himself, his heirs, executors, and administrators, hereby cove-

Further *testatum*.

For nominal consideration, the legatee, and, by his direction, the executor assign to mortgagor,

Premises comprised in mortgage;

Habendum to mortgagor for residue of term, subject to underlease.

Covenant by legatee that neither he nor tes-

6. TRANSFER BY CREATION OF UNDER-LEASE.

nants and agrees with the said [*transferree*], his executors, administrators, and assigns, that neither the said [*testator*] in his lifetime, nor the said [*legatee*] since his decease, hath made, done, executed, or permitted any act, deed, matter, or thing, by means whereof the said —— and premises hereby demised and assigned, or intended so to be, or any part thereof, are or is charged, incumbered, or in anywise prejudicially affected in title, estate, or otherwise howsoever, except as appears by these presents; AND the said [*executor*], for himself, his heirs, executors, and administrators, hereby covenants and agrees with the said [*transferree*], his executors, administrators, and assigns, and also with the said [*mortgagor*], his executors, administrators, and assigns, that he the said [*executor*] hath not heretofore made, done, executed, or permitted any act, deed, matter, or thing, by means whereof the —— and premises hereby demised and assigned, or intended so to be, or any part thereof, are or is charged, incumbered, or in anywise prejudicially affected in title, estate, or otherwise howsoever, except as appears by these presents: PROVIDED ALWAYS, and it is hereby declared and agreed, that if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, the sum of £400 of lawful money of Great Britain and Ireland, with interest for the same from the date hereof after the rate of £5 per centum per annum, on the —— day of —— now next ensuing, without making any deduction out of the same sum and interest respectively for taxes, or on any account whatsoever; then immediately after such payment shall be made as aforesaid, the said [*transferree*], his executors, administrators, or assigns, shall on the request and at the costs of the said [*mortgagor*], his executors, administrators, or assigns, surrender or assure the —— and premises hereby demised, or intended so to be, and all the residue which shall be then unexpired of the term, estate, and interest hereby granted therein, free from all incumbrances to be created by the said [*transferree*], his executors, administrators, or assigns, in the meantime, unto the said [*mortgagor*], his executors, administrators, or assigns, or in such other manner as he or they shall direct. (*Add power of sale, if so intended, as in the precedent,* ante, p. 3. *Also covenants by mortgagor with transferree*

—tator has incumbered;

—by executor, that he has not incumbered.

Proviso for redemption.

that legatee and executor have, or one of them has, power to demise for quiet enjoyment after default, and other covenants and provisions as in the precedent just referred to). In WITNESS &c.

6. TRANSFER BY CREATION OF UNDER-LEASE.

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7. TRANSFER *of* MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS, *in which the Mortgagor joins, subject to the* SUBSISTING EQUITY *of* REDEMPTION, *but with a fresh* COVENANT *for* PAYMENT *by the* MORTGAGOR. APPOINTMENT *of a* RECEIVER (*a*).

7. OF FREEHOLDS AND LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN [*transferror*], of &c., of the first part; [*cestui que trust*], of &c., of the second part; [*mortgagor*], of &c., of the third part; [*transferree*], of &c., of the fourth part; and [*receiver*], of &c., of the fifth part: (*recite mortgage of freehold and leasehold estates by lease and release, and underlease, for securing* £2,000 *and interest; that same was not paid at the time appointed; that all interest had been paid, but principal remained due*): AND WHEREAS the said sum of £2,000 lent and advanced by the said [*transferror*], in manner aforesaid, was the proper money of the said [*cestui que trust*], and the name of the said [*transferror*] was made use of in the above recited indenture of mortgage, in trust for the said [*cestui que trust*], as the said [*transferror*] doth hereby declare and acknowledge: AND WHEREAS the said [*cestui que trust*] having occasion for the said principal sum of £2,000, the said [*mortgagor*] hath requested the said [*transferree*]

Parties.

Recital of mortgage, &c.

That money belonged to *cestui que trust*.

That *cestui que trust* had called in the money.

(*a*) This precedent carries into effect two practical suggestions, given in former notes: first, it exhibits the mode by which a debt can be created between the mortgagor and the transferree *at law* by means of a fresh covenant, without subjecting the deed or raising the question of its liability to an *ad valorem* mortgage stamp; (*vide* observations *ante*, p. 337); and without producing any other inconvenience, as compared with the plan of limiting a new proviso for redemption, than that it subjects the mortgagor to the risk of being sued for the money immediately. The second suggestion exemplified is, that of giving the transferree a power of appointment, which would enable him to convey the estate to any future transferree, or back to the mortgagor, by a single deed.

7. OF FREEHOLDS AND LEASEHOLDS.

Testatum.

to advance the same upon the said mortgage security, which he hath agreed to do. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £2,000 of lawful &c. at the request of the said [*mortgagor*], and with the consent of the said [*transferror*], testified by their respectively executing these presents, paid by the said [*transferree*] to the said [*cestui que trust*] at or immediately before the execution hereof, the receipt of which said sum he the said [*cestui que trust*] doth hereby acknowledge, and therefrom doth release and discharge the said [*transferree*], and also the said [*mortgagor*], and their respective heirs, executors, administrators, and assigns; and also, in consideration (*nominal consideration*), he the said [*transferror*], according to his estate and interest, at the request and by the direction as well of the said [*cestui que trust*] as of the said [*mortgagor*], testified as aforesaid, *Hath* bargained, sold, and released, and by these presents *Doth* bargain, sell, and release, and the said [*mortgagor*] *Hath* granted and confirmed, and by these presents *Doth* grant and confirm, and the said [*cestui que trust*] *Hath* remised and released, and by these presents *Doth* remise and release unto the said [*transferree*] and his heirs (in the actual possession (*b*), &c.), ALL and singular the —— and hereditaments in the parish of ——, in the county of —— aforesaid, hereinbefore described, and all other the freehold hereditaments by the said indentures of lease and release, of the —— and —— days of ——, limited and assured unto and to the use of the said [*transferror*], his heirs and assigns, together with their and every of their rights, members, and appurtenances; And the reversion and reversions, remainder and remainders, rents, issues, and profits of the said hereditaments and premises: AND all the estate, right, title, interest, inheritance, use, trust, property, claim, and demand whatsoever of the said [*transferror*], [*cestui que trust*], and [*mortgagor*] respectively, in and to the same and every or any part thereof: TO HAVE AND TO HOLD the hereditaments and premises hereinbefore released, or expressed so to be, with their and every of their appurtenances, unto the said [*transferree*], his heirs and assigns, TO SUCH USES, and for such estate and estates, intents and purposes, as the said [*transferree*] shall, by any deed or deeds, direct or appoint,

In consideration of principal sum paid by transferree to *cestui que trust*,

Transferror conveys, mortgagor confirms, and *cestui que trust* releases to transferree,

Parcels;

And the reversion, &c.;

And all the estate;

Habendum.

To such uses as transferree shall appoint, and, in default, to him in fee,

(*b*) Lease for a year by transferror and mortgagor.

7. OF FREEHOLDS AND LEASEHOLDS.

and, in default of such direction or appointment, To THE USE of the said [*transferree*], his heirs and assigns, for ever; but subject, nevertheless, to such equity of redemption as the said hereditaments and premises are liable to by virtue of the proviso for redemption contained in the hereinbefore-recited indenture of the —— day of ——. AND THIS INDENTURE FURTHER WITNESSETH, that, for the consideration hereinbefore expressed, the said [*transferror*], at the request and by the direction as well of the said [*cestui que trust*] as of the said [*mortgagor*], testified as aforesaid, *Hath* bargained, sold, and assigned, and by these presents *Doth* bargain, sell, and assign, and the said [*cestui que trust*] *Hath* remised and released, and by these presents *Doth* remise and release unto the said [*transferree*], his executors, administrators, and assigns, ALL the —— and premises in the parish of ——, in the county of ——, aforesaid, hereinbefore described, and all other the leasehold premises comprised in the hereinbefore-recited indenture of mortgage of the —— day of ——, with their and every of their rights, members, and appurtenances: And all the estate, right, title, interest, term of years unexpired, trust, property, claim, and demand whatsoever, of them the said [*transferror*] and [*cestui que trust*] (*c*) respectively in and to the last-mentioned premises: To HAVE AND TO HOLD the said —— and all and singular other the premises hereinbefore assigned, or intended so to be, with their and every of their appurtenances, unto the said [*transferree*], his executors, administrators, and assigns, henceforth during all the residue now unexpired of the term of —— years, wanting —— days, granted by the hereinbefore-recited indenture of mortgage of the —— day of ——, but subject, nevertheless, to such equity of redemption as the said premises are liable to by virtue of the proviso for redemption contained in the said indenture; (*covenant by transferror and cestui que trust that they have done no act to incumber*): AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*transferree*], his executors and administrators, that he the said [*mortgagor*], his heirs, executors, administrators, or assigns, will or shall

Subject to equity of redemption.

Further *testatum:*

Assignment of leaseholds.

Habendum to transferree for the residue of term granted by mortgage.

Covenant by mortgagor for payment of mortgage-money.

(*c*) These words are not extended to the mortgagor, because, the mortgage being by underlease, he has a nominal reversion.

7. OF FREEHOLDS AND LEASEHOLDS.

pay, or cause to be paid, unto the said [*transferree*], his executors or administrators, the said sum of £2,000, with interest for the same from the day of the date hereof after the rate of five pounds for every one hundred pounds by the year, without any deduction or abatement whatsoever. AND THIS INDENTURE FURTHER WITNESSETH, that, for better securing the regular payment of the interest of the said principal sum of £2,000 so advanced by the said [*transferree*] as aforesaid, the said [*transferree*], and also the said [*mortgagor*], on the nomination of the said [*transferree*] do respectively hereby appoint the said [*receiver*] to be the receiver, agent, and attorney (*d*), of the said [*transferree*], in the name or names of the said [*transferree*], his heirs, executors, administrators, or assigns, to demand and receive from all the present and future tenants and occupiers of the hereditaments and premises hereby released and assigned, all the rents and profits now due and hereafter to become due for or in respect of the same premises, and, in default of payment thereof, to use and pursue all such remedies, by distress, entry, or otherwise howsoever, and generally to do all such other acts, as shall be requisite or expedient for the receiving and recovering of the said rents and profits: and the said [*mortgagor*] and [*transferree*], respectively, hereby require the several tenants and occupiers aforesaid to

Further *testatum.*

Mortgagor and transferree join in appointing a receiver.

As to the appointment of a receiver.

(*d*) It is in general convenient to make the appointment of a receiver by a separate instrument, in order that it may be placed in his custody, (see a precedent of such a deed, *ante*, Vol. 2, p. 432, 2nd ed.), though, to save expense, it is frequently included in the mortgage. A more lengthened form of an appointment of this nature has been given in a former precedent, *ante*, p. 117, and which differs from the present in many particulars. Here, it will be observed, the appointment is absolute, and not, according to the more ordinary mode of framing it, conditional on the interest falling into arrear. The advantage to the mortgagee of the appointment of a receiver is, that it enables him to have the rents applied in liquidation of the interest, without placing himself in the troublesome and responsible situation of a mortgagee in possession. In order to prevent all question as to the party on whom any loss arising from the receiver's insolvency, &c., is to fall, it seems proper to introduce an express stipulation on the point; and this is the more requisite on the part of the mortgagee, where, as in the present instance, the receiver is treated as *his* nominee and agent exclusively. See some remarks on the authority and appointment of receivers, *ante*, Vol. 2, pp. 412, 417 *a*, 2nd ed.

pay unto the said [*receiver*] the same rents and profits accordingly, and hereby declare that his receipts shall be effectual discharges for the same; which said rents and profits, when so received, shall be applied by the said [*receiver*] in manner following, (namely), in the first place in discharging all taxes, rents, and outgoings, payable in respect of the said premises; and, in the next place, in retaining and satisfying all reasonable expenses attending the receipt and recovery of the said rents and profits, and also the sum of one shilling in the pound as a compensation for his trouble therein; and, in the next place, in paying unto the said [*transferree*], his executors, administrators, or assigns, the interest which from time to time shall happen to be due and payable, so often as any half-yearly portion thereof shall be in arrear; and in case, after making the several payments aforesaid, there shall be any residue or surplus of such rents and profits, then the same shall be paid by the said [*receiver*] to the said [*mortgagor*], his heirs, executors, administrators, or assigns; without prejudice, nevertheless, to the right of the said [*transferree*], his executors, administrators, or assigns, to have such residue or surplus applied in part payment of the principal of his said mortgage debt, provided he shall give a notice or intimation in writing to that effect to the said [*receiver*]: And it is hereby declared, that the said [*receiver*] shall not be answerable for involuntary losses which may arise in the execution of his said office; and that the said [*transferree*], his executors, administrators, or assigns, shall not be responsible for the acts, receipts, or defaults of the said [*receiver*]. IN WITNESS &c.

Rents how to be applied.

Receiver not to be responsible for involuntary loss; nor transferree for the acts of receiver.

8. BY HEIR AND EXECUTORS, OF FREEHOLD AND COPYHOLD.

8. TRANSFER *of* MORTGAGE *in* FEE, *of* FREEHOLDS *and* COPYHOLDS *intermixed, by the* HEIR-*at*-LAW *and* EXECUTORS *of the* DECEASED MORTGAGEE, *who had been admitted to the Copyholds* (*a*). (*Variation where Mortgage contained a* POWER *of* SALE).

Parties.

THIS INDENTURE, made the —— day of —— in the year ——, BETWEEN [*heir-at-law of mortgagee*], of &c., of the first part; [*executors of mortgagee*], of &c., of the second part; and [*transferree*], of &c., of the third part: WHEREAS, by indentures of lease and release, bearing date, respectively, the —— and —— days of —— in the year ——, the release being made between [*mortgagor*], of &c., and [*wife*], his wife, of the one part; and [*mortgagee*], then of ——, (now deceased), of the other part; and by a fine levied by the said [*mortgagor*] and [*wife*], his wife, in pursuance of a covenant for that purpose contained in the said indenture of release, and by a declaration of the uses of the said fine in the same indenture also contained, the freehold parts of the messuage or dwelling-house, and other buildings, lands, and hereditaments hereinafter mentioned, were conveyed and assured unto and to the use of the said [*mortgagee*] and his heirs, for ever; subject to a proviso for redemption in the said indenture of release contained, on payment by the [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £2,000 with lawful interest for the same, on a certain day now long past (*b*): AND WHEREAS default was

Recital of mortgage;

—That default

(*a*) This precedent applies to a case in which the mortgagee had been admitted; the next, where he was a surrenderee, but had not been admitted; and a subsequent precedent, where, at the time of the transfer, there had been neither admittance nor surrender, the mortgagee having only a covenant to surrender.

—Of power of sale.

(*b*) Add, if the mortgage contained a power of sale—

"And in the said indenture was contained a power authorizing and enabling the said [*mortgagee*], his heirs or assigns, after default should have been made in payment of the said

8. BY HEIR AND EXECUTORS, OF FREEHOLD AND COPYHOLD.

made in payment of the said sum of £2,000 and interest, at the time appointed by the said indenture of release for the payment thereof: AND WHEREAS the said [*mortgagee*] lately departed this life intestate as to the freehold hereditaments and premises vested in him as mortgagee as aforesaid, without ever having had any issue, and thereupon the legal estate in the same hereditaments descended to his eldest brother the said [*heir-at-law*], as his heir-at-law: AND WHEREAS the said [*mortgagee*], deceased, duly made his last will and testament in writing, bearing date the —— day of ——, and thereof appointed the said [*executors*] and another person, executors, and they the said [*executors*] alone proved the same in the Prerogative Court of the Archbishop of Canterbury on the —— day of ——(*c*): AND WHEREAS there now remains due to the said [*executors*], as such executors as aforesaid, upon the said mortgage security, the said principal sum of £2,000 only, all interest for the same down to the date of these presents having been paid, as they do hereby acknowledge: AND WHEREAS the said [*executors*], as executors of the said [*mortgagee*], having occasion for the sum of £2,000, due on the said mortgage security as aforesaid, the said [*transferree*] hath agreed to advance and pay that sum to them, on having a transfer made to him of the said mortgage security in manner hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £2,000 of lawful money of Great Britain and Ireland, paid by the said [*transferree*], with the privity of the said [*heir-at-law*], to the said [*executors*], at or before the sealing and delivery of these presents, in satisfaction and discharge of all money

was made in payment of mortgage-money;

—Death of mortgagee intestate,

—As to estates in mortgage,

—Will and appointment of executors of mortgagee;

—That principal money is due;

—Of agreement for transfer;

Testatum:

In consideration &c., heir, by the direction of the executors, conveys to transferree.

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principal and interest moneys, or any part thereof, to sell and dispose of the said hereditaments, either by public sale or private contract, and to apply the proceeds of such sale in retaining or paying the principal and interest moneys thereby intended to be secured, and for other the purposes in the said indenture expressed."

(*c*) If there is a power of sale, say—

"AND WHEREAS the said [*mortgagee*] did not in his lifetime exercise, nor hath the said [*heir*] since his decease exercised, the power of sale contained in the hereinbefore-recited indenture as aforesaid."

—That it had not been exercised.

8. BY HEIR AND EXECUTORS, OF FREEHOLD AND COPYHOLD.

now due to the said [*executors*], as executors of the will of the said [*mortgagee*], as aforesaid, upon or by virtue of the hereinbefore-recited mortgage security, the receipt whereof accordingly they the said [*executors*] do hereby acknowledge, and therefrom do acquit and discharge the said [*transferree*], his heirs, executors, administrators, and assigns, for ever, by these presents; *And* in consideration of the sum of 10*s.* of like money, at the same time paid by the said [*transferree*], to the said [*heir-at-law*], the receipt whereof is also hereby acknowledged, he the said [*heir-at-law*], at the request and by the direction of the said [*executors*], testified by their execution of these presents, by way of assurance only and not of warranty, *Hath* bargained, sold, and released, and by these presents *Doth* &c.; And the said [*executors*] *Have* remised, released, and quit-claimed, And by these presents *Do* &c., unto the said [*transferree*], and his heirs, ALL THAT (*describe parcels*), save and except out of the release hereby made all such part or parts of the hereditaments and premises hereinbefore described, as is or are of copyhold or of customary tenure (*d*); *And also* all other the freehold hereditaments comprised in the hereinbefore-recited indentures; And all ways, easements, liberties, privileges, rights, and appurtenances whatsoever to the said freehold hereditaments and premises belonging, or therewith held, used, occupied, or enjoyed, or accepted, reputed, taken, or known as part, parcel, or member thereof: (All which said freehold hereditaments are now in the actual possession &c), *And* the reversion and reversions, remainder and remainders, rents, issues, and profits of the hereditaments and premises hereby released, or intended so to be; *And also*, all the estate, right, title, interest, use, trust, property, claim, and demand whatsoever, both at law and in equity, of the said [*heir-at-law*], as such heir-at-law, and of the said [*executors*], as such executors, of the said [*mortgagee*] deceased as aforesaid, in and to the same hereditaments, and premises; TO HAVE AND TO HOLD the messuage or dwelling-house and other buildings, land, hereditaments and premises hereby released, or intended so to be, with their appurtenances, unto the said [*transferree*] and his heirs for ever, TO THE USE of him the said [*transferree*], his

The lands by a certain description, with an exception of the copyhold parts.

And the reversion.

And all the estate, &c.

Habendum,

To the use of transferree in fee.

(*d*) The freehold and copyhold lands appear to have been undistinguishably intermixed.

8. BY HEIR AND EXECUTORS, OF FREEHOLD AND COPYHOLD.

heirs and assigns, for ever; subject, nevertheless, to such right or equity of redemption (if any) as is now vested in the said [*mortgagor*], his heirs or assigns, by virtue of the hereinbefore-recited indenture of mortgage (*e*); And to or for no other use, intent, or purpose whatsoever: AND WHEREAS the said [*mortgagor*] did, in and by the hereinbefore-recited indenture of release and mortgage, for himself and his heirs, covenant with the said [*mortgagee*], his heirs, executors, and administrators, to surrender so much and all such part or parts of the hereditaments and premises hereinbefore described as was or were of copyhold or customary tenure, to the use of the said [*mortgagee*], his heirs and assigns; subject, nevertheless, to a proviso for making void the same on payment of the said principal sum of £2,000, and interest, at the day or time hereinbefore-mentioned (*f*). AND WHEREAS, on the —— day of ——, the said [*mortgagor*], pursuant to the covenant contained in the said indenture, surrendered into the hands of the lord of the manor of [*manor*], the said copyhold hereditaments and premises, by the description of (*describe parcels*), *To the use* of the said [*mortgagee*] and his heirs, subject, nevertheless, to the aforesaid proviso; and at a general court baron held for the said manor on the —— day of —— the said [*mortgagee*] was duly admitted tenant of the said copyhold premises by virtue of such conditional surrender. NOW THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore expressed, the said [*heir-at-law*] (*g*), at the request and by the direction of the said

Recital of covenant to surrender copyhold in mortgage deed;

—Of surrender and admittances.

Further *testatum:*

Heir-at-law of mortgagee co-

(*e*) If there is a power of sale, add—

"But with such powers and authorities for selling and disposing of the said hereditaments, and other powers, authorities, trusts, intents, and purposes, as are expressed and contained in the above-recited indenture, and which are now subsisting, as fully and effectually, to all intents and purposes, as he the said [*mortgagee*] or his heirs could or might have exercised the same."

Variation where the mortgage contains a power of sale.

(*f*) If there is a power of sale, add—

"But with and upon such powers and trusts in case of default of payment thereof, as in the said indenture are thereinbefore expressed, and are hereinbefore referred to."

(*g*) In this instance, the heir at common law, and the heir by the custom, are the same. This, however, may, or may not, be the case.

8. BY HEIR AND EXECUTORS, OF FREEHOLD AND COPYHOLD.

[*executors*], testified as aforesaid, doth hereby for himself, his heirs, executors and administrators, covenant and agree with the said [*transferree*], his heirs and assigns, that the said [*heir-at-law*], or his heirs, shall, on the request and at the costs and charges of the said [*transferree*], his heirs or assigns, at the next court baron to be holden for the said manor of [*manor*], or out of court, as soon as conveniently may be, surrender into the hands of the lord or lady of the said manor, according to the custom thereof, the copyhold hereditaments and premises by the hereinbefore-recited indenture of mortgage covenanted to be surrendered, and to which the said [*mortgagee*], deceased, was admitted tenant as hereinbefore recited, together with all and singular outhouses, buildings, ways, waters, water-courses, trees, woods, underwoods, hedges, ditches, fences, profits, privileges, easements, advantages, rights, members, and appurtenances whatsoever, to the said several hereditaments and premises, or any part or parts thereof, belonging or appertaining, or now or at any time or times heretofore usually held, occupied, or enjoyed therewith; *And also*, all the estate, right, title, or interest at law or in equity of the said [*heir-at-law*], in, to, or out of the said copyhold hereditaments and premises, with their appurtenances, To THE USE of the said [*transferree*], his heirs and assigns for ever; *To the intent* that the said [*transferree*], his heirs or assigns, may be admitted tenant or tenants of the said copyhold premises, to hold the same at the will of the lord, according to the custom of the said manor, and by the rents, suits, and services therefore due and of right accustomed; subject, nevertheless, to such right and equity of redemption (*h*) as aforesaid; *And* that in the meantime, until such surrender as aforesaid shall be made and perfected, he the said [*heir-at-law*], and his heirs, shall and will stand and be seised or possessed of the copyhold hereditaments and premises hereby covenanted to be surrendered, in trust for the said [*transferree*], his heirs or assigns, subject, nevertheless, to such right and equity of redemption as aforesaid; *And* the said [*heir-at-law*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*transferree*], his heirs, executors, administrators, and assigns, that he the said [*heir-at-*

venants to surrender copyholds.

To the use of transferree in fee, subject to equity of redemption.

Covenant by heir that he has not incumbered.

(*h*) " and with such powers and authorities."

law] hath not heretofore done or committed any act, deed, or thing whatsoever, by means whereof the freehold and copyhold hereditaments and premises hereby respectively released and covenanted to be surrendered, or any part thereof, are or is charged, incumbered, or prejudicially affected in title, estate, or otherwise howsoever; (*add further testatum clause making the executors assign the mortgage debt, and give power to sue*, ut ante, p. 326 (*i*)); AND the said [*executors*], for themselves respectively, and for their respective heirs, executors, and administrators, but each of them as to and concerning his own acts, deeds, and defaults, only, do hereby covenant with the said [*transferree*], his executors, administrators, and assigns, that they the said [*executors*], nor either of them, have not nor hath heretofore done or committed, nor, to the knowledge or with the privity of either of them, did the said [*mortgagee*], their said testator, deceased, do or commit any act, deed, or thing, by means whereof the said hereditaments and premises, or any part thereof, or the security mentioned and intended to be hereby made thereof to the said [*transferree*], are or is charged, incumbered, or prejudicially affected in anywise howsoever. (*Add covenant of indemnity by transferree with executors*, ut ante, p. 327). IN WITNESS &c.

8. BY HEIR AND EXECUTORS, OF FREEHOLD AND COPYHOLD.

Covenant by executors that they, and, to their knowledge, their testator, have done no act to incumber.

(*i*) But see an observation, *ante*, p. 337.

9. TRANSFER *of a Mortgage* (*which was made by* DEMISE *of* FREEHOLDS *and* SURRENDER *of* COPYHOLDS) *as a* SECURITY *for a* DEBT *owing by the* TRANSFEROR *to the* TRANSFERREE (*a*).

9. OF FREEHOLDS DEMISED, AND COPYHOLDS SURRENDERED.

THIS INDENTURE, made the —— day of ——, in the year of the Christian æra 18—, BETWEEN [*transferror*], of &c., of the one part; and [*transferree*], of &c., of the other part: WHEREAS, by an indenture bearing date on or about the —— day of ——, and made between [*mortgagor*], of

Parties.

Recital of mortgage;

(*a*) This, in effect, is a mortgage of a mortgage, and should bear the *ad valorem* duty applicable to a mortgage for £500.

9. OF FREEHOLDS DEMISED, AND COPYHOLDS SURRENDERED.

&c., of the one part; and the said [*transferror*], of the other part; in consideration of the sum of £800 due and owing from the said [*mortgagor*] to the said [*transferror*], as therein mentioned, he the said [*mortgagor*] did grant and demise unto the said [*transferror*], his executors, administrators, and assigns, *All* such part and parts as was or were freehold or charterhold, of and in ALL THAT (*describe parcels*); *And also,* all other the freehold and charterhold messuages, lands, tenements, and hereditaments of him the said [*mortgagor*], situate in —— aforesaid, or in any other parish or parishes thereto near or adjoining; *To hold* the same unto the said [*transferror*], his executors, administrators, and assigns, thenceforth for the term of 2,000 years, but subject to and charged with the payment of the sum of £1,500, and interest thereon from the —— day of ——, due and owing to [*prior mortgagee*], of &c., upon or by virtue of a certain lien or equitable mortgage affecting the said freehold premises, and subject also to a proviso for the cessor of the said term of 2,000 years, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*transferror*], his executors, administrators, or assigns, of the sum of £800, and interest for the same at the rate of £5 per centum per annum, on the —— day of —— then next; *And* in the indenture now in recital is contained a covenant on the part of the said [*mortgagor*] to surrender the copyhold parts of the said hereditaments, which were respectively holden of the several manors of —— and ——, in the county of ——, *To the use* of the said [*transferror*], his heirs and assigns, subject to such proviso for redemption as aforesaid, and also to pay the said principal sum and interest at the day or time appointed for payment of the same by the said proviso for redemption; AND WHEREAS, pursuant to his above-recited covenant in that behalf, the said [*mortgagor*] did afterwards duly surrender the copyhold parts of the aforesaid —— and premises, *To the use* of the said [*transferror*], his heirs and assigns, conditionally, for securing the payment of the said sum of £800 and interest, at the time aforesaid; AND WHEREAS default was made by the said [*mortgagor*] in payment of the said principal and interest moneys on the day appointed for payment thereof as aforesaid; but, nevertheless, the said [*transferror*] was not thereupon, nor has been at any time since, admitted to the several copyhold hereditaments so surrendered as aforesaid: AND WHEREAS

—that copyholds have been surrendered pursuant to covenant;

—that default was made in payment, but the transferror had not been admitted;

—that princi-

the whole of the aforesaid principal sum of £800 still remains due to the said [*transferror*] upon the above-recited mortgage securities, together with an arrear of interest on the same sum: AND WHEREAS the said [*transferror*] is indebted to the said [*transferree*] in the sum of £500 for money heretofore lent by him to the said [*transferror*], as the said [*transferror*] doth hereby admit and declare; AND WHEREAS, in order to induce the said [*transferree*] to forbear from compelling immediate payment of the said sum of £500, and effectually to secure the repayment thereof, with interest, at the times and in manner hereinafter mentioned, he the said [*transferror*] hath agreed to assign and transfer his aforesaid mortgage-debt and securities to the said [*transferree*], as hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said sum of £500 of lawful British money so due and owing from the said [*transferror*] to the said [*transferree*] as aforesaid, and [*nominal consideration*], *He* the said [*transferror*] *Hath* bargained, sold, assigned, and set over, *And* by these presents *Doth* bargain, sell, assign, and set over unto the said [*transferree*], his executors and administrators, ALL that the said mortgage debt or principal sum of £800, and the arrears of interest now due thereon, and also all interest henceforth to grow due for the same; and also the said covenant of the said [*mortgagor*] in the above-recited indenture for payment thereof, and all other personal securities (if any) for the same sum and interest, or any part thereof, *Together* with full power and authority (which the said [*transferror*] doth hereby give and grant) to and for the said [*transferree*], his executors, administrators, and assigns, in the name or names, and as the attorney or attorneys, of the said [*transferror*], his executors or administrators, to ask, demand, sue for, recover, receive, and give effectual discharges for the said sum of £800, and the interest thereon, and every or any part thereof: TO HAVE, RECEIVE, and take the said principal sum and interest, and other the premises hereinbefore assigned, or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, in as full and ample and beneficial a manner as the said [*transferror*] could or otherwise might have had or been entitled to the same; subject, nevertheless, to the proviso for redemption herein-

pal is due on mortgage, and an arrear of interest;

—that transferror is indebted to transferee;

—of agreement for transfer.

Testatum.

In consideration of existing debt, &c., transferror assigns to transferree,

principal sum and interest;

with power to sue.

9. OF FREEHOLDS DEMISED, AND COPYHOLDS SURRENDERED.

after contained (*b*). AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations hereinbefore expressed, the said [*transferror*] *Hath* bargained, sold, assigned, and set over, and by these presents *Doth* bargain, sell, assign, and set over unto the said [*transferree*], his executors, administrators, and assigns, all such part and parts as is or are freehold or charterhold of all and singular the —— and hereditaments hereinbefore described, and all other the premises by the hereinbefore-recited indenture demised to the said [*transferror*], his executors, administrators, and assigns, for the said term of 2,000 years as aforesaid: *Together* with the appurtenances to the said hereditaments belonging; *And* all the estate, right, title, interest, term and terms of years still unexpired, trust, property, benefit, claim, and demand whatsoever, both at law and in equity, of the said [*transferror*], in, to, and upon the same several premises; and also the hereinbefore-recited indenture of mortgage, and all other deeds, evidences, and writings relating to the said mortgaged hereditaments now in the custody or power of the said [*transferror*]; TO HAVE AND TO HOLD the —— and hereditaments hereby assigned, or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, henceforth during all the residue now to come and unexpired of the said term of 2,000 years, and for all other the term and estate of the said [*transferror*] therein; but subject to such right or equity of redemption as is or may be subsisting in respect of the same premises under or by virtue of the hereinbefore-recited indenture of mortgage, on payment of the said sum of £800 and interest: *subject* also to the proviso hereinafter contained for redemption thereof by the said [*transferror*], his executors, administrators, and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement and for the consideration hereinbefore expressed, he the said [*transferror*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*transferree*], his heirs and assigns, that he the said [*transferror*] or his heirs shall and will,

Further *testatum*.

For considerations aforesaid, transferror assigns to transferree all such parts of the hereditaments comprised in the mortgage as are freehold;

and all the estate, &c.

Habendum for remainder of term.

Subject to subsisting equity of redemption, and to proviso after contained.

Further *testatum*:

Transferror covenants to procure himself to be admitted to the copyholds, and to surrender them to transferree.

(*b*) In the draft from which this precedent was taken, the debt and lands were included in one *testatum* clause; but it rather conduces to perspicuity to have a separate *testatum* for each.

9. OF FREEHOLDS DEMISED, AND COPYHOLDS SURRENDERED.

at his or their own costs and charges, at the several next general or special courts to be holden in and for the respective manors whereof the copyhold parts of the aforesaid —— and other hereditaments hereinbefore described are holden, procure himself or themselves to be duly admitted under the several hereinbefore-recited conditional surrenders of the said [*mortgagor*], to all and singular the same copyhold premises; and immediately thereupon effectually surrender the same, and all his or their estate and interest therein, into the hands of the respective lords or ladies of the same several manors, or their respective stewards, according to the respective customs thereof, *To the use* of the said [*transferree*] and his heirs, but by way of mortgage only, for securing the repayment to him, the said [*transferree*], his executors, administrators, and assigns, of the said sum of £500 and interest, at the times and in the manner hereinafter mentioned, and subject to conditions in that behalf accordingly, and subject also to such right or equity of redemption as the said [*mortgagor*], his heirs or assigns, is or may be entitled to therein on payment of the aforesaid mortgage debt of £800, and interest secured thereon, as hereinbefore mentioned; *And moreover*, that, in the meantime, and until the same copyhold premises respectively shall be so duly surrendered as aforesaid, the said [*transferror*], his heirs and assigns, and all and every other person or persons, by or in whom the same, or any part thereof, are, is, or may be held or vested, shall stand and be seised of and interested in the same, *In trust* to secure to the said [*transferree*], his executors, administrators, and assigns, the repayment of the aforesaid sum of £500, and interest accordingly; *Provided always*, and it is hereby agreed and declared, that if the said [*transferror*], his heirs, executors, administrators, or assigns, shall pay or cause to be paid to the said [*transferree*], his executors, administrators, or assigns, the sum of £500 of lawful British money, with interest for the same at the rate of five pounds for one hundred pounds for a year, on the —— day of —— now next ensuing, without any deduction or abatement thereout whatsoever, then, or at any time thereafter, the said [*transferree*], his executors, administrators, or assigns, shall and will, (unless the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall previously have exercised his or their right or equity of redemption), upon

And that in the meantime he will hold in trust for transferree.

Proviso for redemption.

9. OF FREEHOLDS DEMISED, AND COPYHOLDS SURRENDERED.

the request and at the costs of the said [*transferror*], his executors, administrators, or assigns, re-assign to the said [*transferror*], his executors, administrators, or assigns, the aforesaid principal sum of £800, and interest, or so much thereof as shall then remain unpaid; *And also*, the freehold or charterhold premises hereinbefore assigned, or otherwise dispose thereof as he or they shall order or direct, free from all intermediate incumbrances to be made, done, committed, or suffered, by the said [*transferree*], his executors, administrators, or assigns, but subject to such prior incumbrance and equity of redemption as hereinbefore mentioned.

Covenants by transferror,—to pay principal and interest moneys hereby secured;

AND the said [*transferror*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*transferree*], his executors, administrators, and assigns, in manner following, that is to say, that he the said [*transferror*], his heirs, executors, administrators, or assigns, will and shall pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, the said sum of £500 and interest, upon or at the day or time in the aforesaid proviso for redemption mentioned for payment thereof, without any deduction or abatement whatsoever, according to the true intent of these presents; *And*

—that principal and interest moneys are actually due on assigned mortgage;

that the whole of the said principal sum of £800, together with an arrear of interest thereon, is now due and owing to the said [*transferror*], upon the security of the —— and other hereditaments comprised in the above-recited indenture of mortgage and conditional surrenders respectively, and the covenant in the same indenture contained for payment of

—that he hath power to assign;

the same principal sum and interest; AND FURTHER, that he the said [*transferror*] now hath full power and authority to assign the said sum of £800, and interest, and the freehold parts of the said mortgaged premises, and to procure himself to be admitted to, and thereupon to surrender, the copyhold parts thereof unto the said [*transferree*], his heirs, executors, administrators, and assigns, respectively, according to the several legal qualities thereof, subject as and in

—that premises are well charged;

manner aforesaid; *And* that the same freehold and copyhold premises respectively are well, firmly, and effectually subjected to, and charged with, the payment of the aforesaid principal sum of £800, and interest, subject only as to the freehold parts thereof to such prior incumbrance thereon to the said [*prior mortgagee*], as is hereinbefore mentioned;

—and for further assurance.

And further, that he the said [*transferror*], his heirs, execu-

9. OF FREEHOLDS DEMISED, AND COPYHOLDS SURRENDERED.

tors, and administrators, and all other persons whosoever, claiming any estate, right, title, or interest, in or to the said freehold and copyhold premises, or the mortgage debt and interest hereby assigned, (except the person or persons entitled to the equity of redemption hereinbefore referred to, and, as to the said freehold premises, such prior incumbrancer as aforesaid), shall and will at any time or times hereafter, upon every reasonable request of the said [*transferree*], his executors, administrators, or assigns, but at the costs and charges of the said [*transferror*], his executors or administrators, make, do, and execute, all such further acts, deeds, and things whatsoever, for the further and more effectually assigning and assuring of the said sum of £800 and interest, and all securities for the same; and for enabling the said [*transferree*], his executors, administrators, and assigns, to receive and recover the said moneys, and also for assigning, surrendering, and assuring all the freehold and copyhold premises in manner aforesaid according to the true intent and meaning of these presents, as by the said [*transferree*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised and required; PROVIDED ALWAYS, and it is hereby further agreed and declared, that in the meantime, and until default shall be made in payment of the said sum of £500, or the interest thereon, or some part thereof respectively, contrary to the proviso and agreement hereinbefore contained in that behalf, or until the said mortgage debt or sum of £800 hereby assigned shall be paid or called in as next hereinafter mentioned, it shall be lawful for the said [*transferror*], his executors, administrators, and assigns, to receive the interest for the said principal sum of £800, but not the same principal sum or any part thereof(*c*); *And that*, in case the said [*transferree*], his executors, administrators, or assigns, shall think fit to call in and compel payment of the said principal sum of £800, or any part thereof, (which it shall be lawful for him or them to do), or the same shall otherwise be paid off, either before or after default shall be made in payment of the aforesaid sum of £500 and interest, then, and in either of the said cases, the said principal sum of

Agreement that, until default, transferror may receive interest, but is not to receive principal.

Principal, if paid, how to be applied by the transferree.

(*c*) The transferree will, of course, prevent this, by giving notice of the transfer to the mortgagor.

9. OF FREEHOLDS DEMISED, AND COPYHOLDS SURRENDERED.

£800, or any such part thereof as aforesaid, together with all arrears of interest then due thereon, shall be payable and paid to the said [*transferree*], his executors, administrators, or assigns; and he or they, deducting thereout the said sum of £500 and interest for the same at the rate aforesaid, up to the day of such payment of the said sum of £800, or any such part thereof as aforesaid, together with the costs and charges of recovering and receiving the same, shall pay over the residue or surplus thereof, if any, unto the said [*transferror*], his executors, administrators, or assigns (*d*): AND LASTLY, it is hereby declared, that every person paying to the said [*transferree*], his executors, administrators, or assigns, any sum or sums of money by virtue of these presents, shall be exonerated from all responsibility in respect of the application thereof, and shall not be obliged to inquire whether the receipt thereof by him or them is necessary for, or consistent with, the purposes and trusts herein expressed, or be affected by express notice that the same is unnecessary for and inconsistent with such purposes and trusts. IN WITNESS &c.

Transferree's receipts to discharge persons paying moneys.

Transferree not to be responsible on account of delay to call in mortgage-money.

(*d*) Perhaps it may be proper to add a clause to the following effect: "But it is nevertheless declared, that the said [*transferree*], his executors, administrators, or assigns, shall not incur any responsibility by reason of his or their neglect or omission to apply for, or to enforce, the payment of the said mortgage debt, or principal sum of £800 and interest, or of any part thereof, from and after default shall have been made in payment of the moneys hereby intended to be secured, any rule of equity to the contrary notwithstanding."

As to the expediency of clauses of this nature, *vide ante*, Vol. 5, p. 295. Of course they are more required in the case of the transfer of a personal than of a real security, as it could scarcely be contended that any responsibility was contracted by a transferree, who delayed to call in the latter. The clause, however, precludes any such question.

10. TRANSFER *of a Mortgage in Fee to a Trustee for the Transferree, by* SURVIVING MORTGAGEES, *with the* CONSENT *of the* ADMINISTRATOR *of a* DECEASED MORTGAGEE (*a*), *in which the* MORTGAGOR *also joins; where the Mortgage was made to secure the* RE-TRANSFER *of* THREE PER CENT. CONSOLS, *in lieu of which the Mortgagees accept a* SUM *of* MONEY, *paid partly by the Transferree, and partly by the Mortgagor himself.* POWER *of* DISTRESS *for* RECOVERY *of* INTEREST.

10. BY SURVIVING MORTGAGEES AND ADMINISTRATOR OF DECEASED MORTGAGEE.

THIS INDENTURE, made the —— day of ——, BETWEEN [*surviving mortgagees*], of &c., of the first part; [*administrator of deceased mortgagee*], of &c., of the second part; [*mortgagor*], of &c., of the third part; [*transferree*], of &c., of the fourth part; and [*trustee*], of &c., of the fifth part. WHEREAS, by indentures of lease and release, respectively bearing date on or about the —— and —— days of ——, and made between the said [*mortgagor*], of the one part, and the said [*surviving mortgagees*] and [*deceased mortgagee*] therein described, of the other part, in consideration of the transfer of £1,000, Three Pounds per centum Consolidated Bank Annuities by the said [*mortgagees*], into the name of the said [*mortgagor*], as in the said indenture of release is mentioned, the said [*mortgagor*] did grant, release, and confirm unto the said [*mortgagees*], their heirs and assigns, ALL THAT (*describe parcels*); *To hold* the same, with the appurtenances, unto and to the use of the said [*mortgagees*], their heirs and assigns, for ever; subject, nevertheless, to a proviso or condition contained in the said indenture of release, for the redemption of the premises, in case the said

Parties.

Recital of mortgage;

Proviso for redemption on transfer of stock and payment of dividends.

(*a*) The mortgagees in this instance were trustees, but the mortgage-deed not having contained the usual declaration, that the stock should be transferrable to the survivors, exclusively of the representatives of a deceased mortgagee, (*ut ante*, Vol. 5, p. 584), the junction of the personal representative of the deceased was requisite, to avoid disclosing the trust, which is always desirable.

10. BY SURVIVING MORTGAGEES AND ADMINISTRATOR OF DECEASED MORTGAGEE.

[*mortgagor*], his heirs, executors, administrators, or assigns, should transfer into the names of the said [*mortgagees*], their executors, administrators, or assigns, on the —— day of ——, in the year ——, £1,000, Three Pounds per centum Consolidated Bank Annuities, and also in the meantime should pay unto the said [*mortgagees*], their executors, administrators, or assigns, such sums of money as from time to time would have been payable to them, as and for the dividends of the said annuities, if the same had remained in their names, by half-yearly payments on or at the days or times at which such dividends would have been payable: AND WHEREAS default was made by the said [*mortgagor*] in transferring the said £1,000, Three Pounds per centum Consolidated Bank Annuities on the day appointed by the said recited indenture of release: AND WHEREAS the said [*deceased mortgagee*] departed this life in the month of ——, 18—, intestate; and on the —— day of —— of the same year administration of his goods, chattels, and credits, was granted to the said [*administrator*] by the Prerogative Court of the Archbishop of Canterbury: AND WHEREAS the said £1,000, Three Pounds per centum Consolidated Bank Annuities, transferred by the said [*mortgagees*] to the said [*mortgagor*] by way of loan as aforesaid, belonged to them the said [*mortgagees*] on a joint account; and the said [*administrator*], as the personal representative of the said [*deceased mortgagee*], deceased, hath no beneficial interest therein, as he doth hereby acknowledge: AND WHEREAS the said £1,000, Three Pounds per centum Consolidated Bank Annuities are still owing from the said [*mortgagor*] on or by virtue of the above-recited security, but all sums payable in respect of the dividends thereof have been duly paid by him up to the day of the date of these presents, as the said [*surviving mortgagees*] do hereby acknowledge: AND WHEREAS the said [*surviving mortgagees*] have applied to the said [*mortgagor*] for the transfer of the said £1,000 annuities: and the said [*mortgagor*], being at present unable to raise the same without pecuniary assistance, hath requested the said [*transferree*] to lend and advance on the said mortgage security the sum of £500 sterling, which he hath consented and agreed to do, on having the same secured to be paid to him with interest in the manner hereinafter mentioned: And the said [*surviving mortgagees*] have agreed to accept the sum of £850 ster-

—That default was made.

—Of death of one of the mortgagees, and administration of his effects.

—That the stock belonged to mortgagees on a joint account.

Stock still due.

—Of agreement by transferree to advance 500*l.*

—That mortgagees had agreed

ling, in lieu of the said £1,000, Three Pounds per centum Consolidated Bank Annuities, the same being the estimated value thereof on the day of the date of these presents. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the above-recited agreement, and in consideration of the sum of £850 of lawful British money paid to the said [*surviving mortgagees*], with the consent of the said [*administrator*], testified by his executing these presents, at or before the sealing and delivery of these presents, in manner following, that is to say, the sum of £500, part thereof, by the said [*transferree*], at the request and by the direction of the said [*mortgagor*], testified as aforesaid, and the sum of £350, the residue thereof, by the said [*mortgagor*]; the receipt of which said sum of £850, in manner aforesaid, the said [*surviving mortgagees*] do hereby acknowledge, and that the same is in full satisfaction and discharge of the said £1,000, Three Pounds per centum Consolidated Bank Annuities and the dividends thereon, secured or intended to be secured in and by the hereinbefore-recited indenture of mortgage, and from the same do release and discharge the said [*transferree*] and [*mortgagor*] respectively, and their respective heirs, executors, and administrators; and also in consideration of the sum of 10*s.* of lawful money aforesaid, to each of them the said [*administrator*] and [*mortgagor*], at the same time paid by the said [*trustee*], the receipt whereof is hereby also acknowledged, they the said [*surviving mortgagees*], with the consent of the said [*administrator*], by the direction of the said [*mortgagor*], and on the nomination of the said [*transferree*], (testified as aforesaid), *Have*, and each of them *Hath*, bargained, sold, and released, and by these presents, *Do* &c.; And the said [*mortgagor*] *Hath* granted, bargained, sold, aliened, released, and confirmed, and by these presents *Doth* &c.; And the said [*administrator*] hath remised, released, and for ever quit-claimed, and by these presents *Doth* &c., unto the said [*trustee*], in (his actual possession, &c.), (*lease for a year made by the surviving* [*mortgagees and mortgagor*]), and to his heirs, ALL THAT the —— hereinbefore described, and all and singular other the premises comprised in the above-recited indentures of lease and release of the —— and —— days of ——, and thereby granted and assured unto and to the use of the said [*mortgagees*], their heirs,

10. BY SURVIVING MORTGAGEES AND ADMINISTRATOR OF DECEASED MORTGAGEE.

to accept 850*l.* in lieu of stock.

Testatum :— Surviving mortgagees, with consent of administrator of deceased mortgagee and mortgagor, convey, mortgagor confirms, and administrator releases to transferree.

Parcels.

10. BY SURVIVING MORTGAGEES AND ADMINISTRATOR OF DECEASED MORTGAGEE.

and assigns, as aforesaid; And all houses, &c.; And the reversion, &c.; And all the estate, &c.; And all deeds, &c.; To HAVE AND TO HOLD the said ——, and all and singular other the premises hereby released, with their appurtenances, unto and To THE USE of the said [*trustee*], his heirs and assigns, for ever; IN TRUST, nevertheless, for, and for the only benefit of, the said [*transferree*], his heirs and assigns; absolutely discharged from the proviso for redemption contained in the hereinbefore-recited indenture of release, and all equity thereupon; but, nevertheless, subject to the proviso hereinafter contained for the redemption of the same premises. AND the said [*surviving mortgagees*], for themselves respectively, and their respective heirs, executors, and administrators, but each of them as to and concerning his own acts, deeds, and defaults only, do hereby covenant and agree with the said [*trustee*], his heirs and assigns, that they the said [*surviving mortgagees*] have not, nor hath either of them, at any time heretofore made, done, executed, or permitted any act, deed, matter, or thing, whereby or by means whereof the —— hereditaments and premises hereby released, or intended so to be, or any part thereof, are or is charged, incumbered, or in anywise prejudicially affected in title, estate, or otherwise howsoever: PROVIDED ALWAYS, and it is hereby declared and agreed, that, if the said [*mortgagor*], his heirs, executors, administrators, or assigns, shall pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, the sum of £500 of lawful British money, on the —— day of —— which will be in the year of our Lord 18—, with interest for the same in the meantime after the rate of £5 per centum per annum, such interest to be paid in even portions, half-yearly, on the —— day of —— and the —— day of —— in every year, and the first of such half-yearly portions to be paid on the —— day of —— now next ensuing, without making any deduction out of the same sum and interest respectively for taxes, or on any other account whatsoever, then, immediately after such payments shall be made as aforesaid, the said [*transferree*], his heirs or assigns, will or shall, on the request, and at the costs and charges of the said [*mortgagor*], his heirs or assigns, release, and also cause and procure the said [*trustee*], or his heirs, or other the person or persons in whom the legal estate of the said —— and here-

Habendum.

Covenant by mortgagees that they have not incumbered.

Proviso for redemption.

ditaments shall then be vested, in trust for the said [*transferree*], his executors, administrators, or assigns, to convey and assure the same hereditaments, (free from all incumbrances to be made, created, or occasioned by the said [*transferree*] or [*trustee*], or either of them, or the heirs or assigns of them or either of them, in the meantime) unto and to the use of the said [*mortgagor*], his heirs or assigns, or to such uses and in such manner as he or they shall direct. (*Add covenant by mortgagor with transferree to pay principal on a future day, and interest in the meantime half-yearly, following the terms of the proviso for redemption*). And for better securing the payment of the interest (*b*) of the said principal sum of £500, the said [*mortgagor*], and also the said [*trustee*], at the request and by the direction of the said [*mortgagor*], do respectively hereby grant unto the said [*transferree*], his executors, administrators, or assigns, that, when and so often, from time to time, as it shall happen that the interest of the said principal sum of £500, or any part thereof, shall be in arrear and unpaid for the space of fourteen days after any or either of the days hereinbefore appointed for payment of the same, it shall be lawful for the said [*transferree*], his executors, administrators, or assigns, into and upon the —— and premises hereby released, or intended so to be, or into and upon any part of the same in the name of the whole, to enter, and distrain for the same interest; and the distress and distresses then and there found to dispose of according to law, in the same manner in all respects as landlords are enabled and authorized to do with respect to distresses for arrears of rent reserved upon leases for years; to the intent that the said [*transferree*], his executors, administrators, or assigns, may, by the same distress or distresses, be paid and satisfied all arrears of the said interest, and all costs and charges occasioned by the non-payment thereof. *Provided nevertheless*, and it is hereby declared, that the power of distress hereby given shall not prejudice nor affect any of the other powers and remedies of the said [*transferree*], his executors, administrators, or assigns, for the recovery of the principal and interest moneys hereby intended to be secured. (*Add*,

10. BY SURVIVING MORTGAGEES AND ADMINISTRATOR OF DECEASED MORTGAGEE.

Power to distrain for interest.

(*b*) As to the utility of a power of distress for recovery of the interest upon a mortgage, *vide ante*, Vol. 5, p. 514.

10. BY SURVIVING MORTGAGEES AND ADMINISTRATOR OF DECEASED MORTGAGEE.

if deemed necessary (*c*), *covenants for title by mortgagor: Also, usual proviso for quiet enjoyment by mortgagor until default*). IN WITNESS &c.

(*c*) Probably, where no further sum is advanced by the transferree, it would not, in general, be deemed necessary to add covenants for title, as the covenants entered into with the mortgagee, and which will have vested, with the estate, in the transferree, would entitle him to the same extent of damages as any fresh covenants with himself would do.

11. BY MORTGAGEE IN POSSESSION.

11. TRANSFER *of* MORTGAGE *of* LEASEHOLDS *by* MORTGAGEE *in* POSSESSION *whose Principal had been reduced by the Receipt of the Rents; Special* COVENANT *of* INDEMNITY *by Transferree, on account of the Possession being delivered to him.* (*Variation where the Transfer is made, not by the original Mortgagor, but by a Transferree*).

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*transferror*], of &c., of the one part, and [*transferree*], of &c., of the other part. WHEREAS (*recite indenture of assignment of leaseholds by way of mortgage, for securing* £700 *and interest*): AND WHEREAS the said principal sum of £700 and interest are further secured by the bond or obligation of the said [*mortgagor*], bearing even date (*a*) with the hereinbefore-recited indenture of mortgage, conditioned for the payment of the same at the time and in the manner expressed in the hereinbefore-recited proviso for redemption: AND WHEREAS the said principal sum and interest were not paid by the said [*mortgagor*] at the time appointed by the hereinbefore-recited indenture and bond for payment thereof (*b*): AND WHEREAS the

Parties.

Recital of mortgage.

—Of mortgage bond.

That principal

(*a*) As to the stamp on a mortgage bond, *vide ante*, Vol. 5, p. 518 *et seq.*

(*b*) If there has been a prior transfer, recite it as follows:—

—Recital of preceding transfer.

"AND WHEREAS, by indenture of assignment, bearing date on or about the —— day of ——, and made between the said

said [*transferror*] some time since entered into the receipt of the rents of the said mortgaged premises, and received various sums of money on account thereof, by means of which the principal sum of £700, secured by the hereinbefore-recited indenture of mortgage and bond, has been reduced to the sum of 475*l.* 15*s.*, which last-mentioned sum, with interest from the —— day of —— last, now remains owing and unpaid to the said [*transferror*], as he doth hereby testify and declare: AND WHEREAS the said [*transferror*] has agreed to transfer to the said [*transferree*] the residue now due to him of his said mortgage debt, and of his interest in the said premises as such mortgagee as aforesaid, in consideration of the sum of £400. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in considera-

11. BY MORTGAGEE IN POSSESSION.

had been reduced by receipt of the rents.

—Of agreement for transfer.

Testatum.

[*mortgagee*], of the one part, and the said [*transferror*], of the other part; in consideration of the sum of 717*l.* 10*s.* at the time of the execution thereof paid by the said [*transferror*] to the said [*mortgagee*], being the whole amount of the principal and interest moneys then owing upon the said mortgage security, the said [*mortgagee*] assigned to the said [*transferror*], his executors, administrators, and assigns, all and singular the —— and premises comprised in and assigned by the hereinbefore-recited indenture of mortgage; *To hold* the same unto the said [*transferror*], his executors, administrators, and assigns, for all the residue then unexpired of the term of —— years vested in him the said [*mortgagee*] as aforesaid, subject, nevertheless, to such equity of redemption as the said premises were then subject to by virtue of the said indenture; and the said [*mortgagee*] also assigned to the said [*transferror*], his executors, administrators, and assigns, the principal sum of £700 and interest, secured by the hereinbefore-recited indenture of mortgage and bond, and the benefit of all securities for the same, and did thereby irrevocably appoint the said [*transferror*], his executors or administrators, the attorney or attorneys of him the said [*mortgagee*], his executors or administrators, for the purpose of receiving and recovering the same principal and interest moneys, and giving effectual discharges for the same, with all power to appoint a substitute or substitutes, either irrevocably or otherwise, for all or any of the purposes aforesaid."

11. BY MORTGAGEE IN POSSESSION.

For pecuniary consideration, transferror assigns mortgage debt to transferee.

tion of the sum of £400 (*c*) of lawful British money, paid by the said [*transferree*] to the said [*transferror*] at or before the execution of these presents, the receipt of which said sum the said [*transferror*] doth hereby acknowledge, and from the same doth hereby release and for ever discharge the said [*transferree*], his executors, administrators, and assigns, the said [*transferror*] *Hath* bargained, sold, assigned, and transferred, and by these presents *Doth* bargain, sell, assign, and transfer unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the principal sum of 475*l.* 15*s.* so remaining due and owing to the said [*transferror*], on the hereinbefore-recited mortgage security, and interest thereon from the —— day of —— last, as aforesaid, and all other the moneys owing to the said [*transferror*] upon or by virtue of the hereinbefore-recited indenture of mortgage, and also the said indenture and the hereinbefore-recited bond bearing even date therewith, and the full benefit and advantage thereof respectively, and of all other securities for the payment of the said principal and interest moneys: *And also* all the right, title, interest, claim, and demand whatsoever, both at law and in equity, of the said [*transferror*] in or to the same principal sum and interest, and premises; TO HAVE AND RECEIVE the said principal and interest moneys, and other the premises hereinbefore assigned, or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, as and for his and their proper moneys and effects absolutely (*d*), with full power and authority for him and them, in the name or names, and as the attorney or attorneys irrevocable of the said [*transferror*], his executors or administrators, but at the risk, costs, and charges of the said [*transferree*], his executors, administrators, or assigns, to ask and demand,

And all the right, &c.

Habendum with power to sue in the name of transferror.

(*c*) Where a mortgagee assigns his debt for a less sum than is due to him, it seems advisable to stamp the deed with the *ad valorem* duty attaching to a purchase for that sum, for the reasons stated *ante*, Vol. 5, p. 534.

(*d*) If there has been a preceding transfer, *ut ante*, p. 366, say—

Variation where the transfer is made by a transferree.

" with full power and authority for him or them as the substitute or substitutes irrevocable of the said [*transferror*], his executors or administrators, under or by virtue of the power or authority in that behalf hereinbefore recited, but at the risk, costs, and charges," &c.

sue for, recover, and receive from all persons whom it may concern the principal and interest moneys hereby assigned, or intended so to be, or any part thereof, and to give effectual discharges for the same, and to do and execute all such other acts, matters, and things as may be requisite for deriving the full benefit of the assignment hereby made, and to appoint a substitute or substitutes either revocably or irrevocably for all or any of the purposes aforesaid; the said [*transferror*] hereby ratifying and confirming, and agreeing to ratify and confirm, whatsoever the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises. AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations hereinbefore expressed, he the said [*transferror*] *Hath* bargained, sold, assigned, and transferred, and by these presents *Doth* bargain, sell, assign, and transfer unto the said [*transferree*], his executors, administrators, and assigns, ALL AND SINGULAR the —— and premises hereinbefore described, and all other the premises (if any) comprised in and assigned by the hereinbefore-recited indenture of mortgage of the —— day of ——, and all the rights, members, and appurtenances to the said premises, or any part thereof, belonging or appertaining, or therewith usually held and enjoyed; Together with the hereinbefore-mentioned indentures of lease and mortgage, and the full and whole force, benefit, and effect thereof respectively; *And all* the estate, right, title, interest, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*transferror*] in and to the said premises: TO HAVE AND TO HOLD the said —— and other the premises lastly hereby assigned or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, henceforth for all the residue and remainder now to come and unexpired of the term of —— years granted by the hereinbefore-mentioned indenture of lease, the residue whereof was assigned to the said [*transferror*] by the hereinbefore-recited indenture of mortgage (*e*), and for all other the estate, term, and interest of him the said [*transferror*] in or to the said premises, or any part thereof: subject, nevertheless, to the payment of

11. BY MORTGAGEE IN POSSESSION.

Further *testatum*.

For the considerations aforesaid, transferror assigns the mortgaged premises to transferree.

Habendum, subject to rents &c. of lease, and to equity of redemption (if any), for residue of term.

(*e*) *Or*, "assignment."

11. BY MORTGAGEE IN POSSESSION.

the rent, and the observance and performance of the covenants, conditions, and agreements reserved and contained by and in the hereinbefore-mentioned indenture of lease, and which, on the part of the lessee, his heirs, executors, administrators, or assigns, ought henceforth to be paid, observed, and performed; and subject also to such equity or right of redemption (if any) (*f*) as is now subsisting under or by virtue of the proviso for redemption contained in the hereinbefore-recited indenture of mortgage. AND the said [*transferror*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*transferree*], his executors, administrators, and assigns, that the said sum of £——, and the interest thereon from the —— day of —— last, are now due and owing to the said [*transferror*] on the hereinbefore-recited mortgage security; *And that* the said [*transferror*] hath full power and absolute authority to assign unto, or authorize and empower the said [*transferree*], his executors or administrators, to receive and recover the same; and also to assign to him or them the leasehold —— and premises hereby expressed to be assigned in manner aforesaid, according to the true intent and meaning of these presents; *And also*, that the rent, conditions, and covenants reserved and contained by and in the hereinbefore-mentioned indenture of lease of the —— day of ——, on the lessee's part to be paid and performed, have been duly paid and performed up to the day of the date hereof; *And further*, that the said [*transferror*], his executors, or administrators, will not at any time or times hereafter, release or discharge the said principal sum and interest hereby assigned, or any part thereof respectively, nor revoke or make void the power or authority hereinbefore given to the said [*transferree*], his executors, administrators, or assigns, without his or their consent in writing for that purpose first obtained; *And lastly*, that the said [*transferror*], his executors, administrators, or assigns, and every person whosoever lawfully claiming from, through, or under him or them, will, from time to time, and at all times hereafter, upon the

Covenant by transferror, that principal and interest are due;

—for power to assign;

—that rent and covenants of lease have been paid, and performed;

—not to release debt, &c.;

—and for further assurance.

(*f*) [The question, whether a conveyance by a mortgage in those qualified terms would keep alive or revive the equity of redemption, (see *Hardy* v. *Reeves*, 4 Ves. 840), has now lost its interest, in consequence of the enactments of the Statute of Limitations, stated *ante*, Vol. 5, p. 385.]

11. BY MORTGAGEE IN POSSESSION.

request, and at the costs and charges of the said [*transferree*], his executors, administrators, or assigns, make, do, execute, and perfect every such lawful act, deed, assignment, or assurance in the law whatsoever, for more effectually assigning or otherwise assuring the said principal and interest moneys, and other the premises firstly hereinbefore assigned, or intended so to be, unto the said [*transferree*], his executors, administrators, and assigns, in manner aforesaid, and for better enabling him or them to recover and receive the same; and also for assigning or otherwise assuring the leasehold premises lastly hereinbefore assigned, or intended so to be, for all the residue of the term hereby expressed to be assigned therein, according to the true intent and meaning of these presents; as by the said [*transferree*], his executors, administrators, and assigns, or his or their counsel in the law, shall be reasonably advised and required. AND the said [*transferree*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*transferror*], his executors and administrators, that the said [*transferree*], his heirs, executors, or administrators, will or shall at all times hereafter effectually keep indemnified the said [*transferror*], his heirs, executors, and administrators, from and against all costs, losses, damages, and expenses, accounts, reckonings, claims, and demands whatsoever, by reason or in respect of the power or authority hereinbefore given to the said [*transferree*], his executors, administrators, and assigns, to sue and proceed for the recovery of the principal and interest moneys hereby assigned (*g*), in the name or names, or as the attorney or attorneys, of the said [*transferror*], his executors or administrators, or by reason of any act or default to be done or committed by the said [*transferree*], his executors, administrators, or assigns, touching or concerning the rents and profits, possession, or management of the leasehold premises hereby assigned, the possession whereof hath been or is intended forthwith to be delivered

Covenant by transferree to indemnify transferror against loss, in consequence of his name being used in actions.

(*g*) If there has been a preceding transfer, *ut ante*, p. 366, say—

"as the substitute or substitutes of the said [*transferror*], his executors or administrators, by virtue of the power or authority in that behalf contained in the hereinbefore-recited indenture, or by reason" &c., *ut supra*.

11. BY MORTGAGEE IN POSSESSION.

to the said [*transferree*] by the said [*transferror*], as such mortgagee in possession as aforesaid (*h*). IN WITNESS &c.

(*h*) This clause in the covenant is suggested by the observations *ante*, Vol. 5, p. 403.

12. ON CHANGE OF TRUSTEES.

12. TRANSFER *of* MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS, *for securing* TRUST-MONEYS (*but not disclosing the Trust*) *on a* PARTIAL CHANGE *of* TRUSTEES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [A.], of &c., and [B.], of &c., of the first part; the said [B.] (*a*), [C.], of &c., and [D.], of &c., of the second part; and [E.], of &c., of the third part: WHEREAS, by indentures of lease and release and assignment, bearing date respectively on or about the —— and —— days of ——, and made between [*mortgagor*] of the one part, and the said [A.] and [B.] of the other part, two certain pieces or parcels of freehold land, called —— and ——, situate in the parish of ——, in the county of ——, therein particularly mentioned, with their appurtenances, were conveyed and assured unto and to the use of the said [A.] and [B.], their heirs and assigns; and a certain messuage or tenement, situate in —— street, in the parish of ——, in the city of —— (*b*), was assigned to the said [A.] and [B.], their executors, administrators, and assigns, for all the residue of a certain term of ninety-nine years, granted by and commencing from the day of the date of an indenture of lease, bearing date the —— day of ——, and therein recited, subject respectively to a proviso for redemption of the said premises, upon payment of the sum of £500 of lawful British money, with interest thereon at the rate of £5 per centum per annum, in manner therein mentioned: AND WHEREAS the said [A.] and [B.] have agreed to convey and assign the hereditaments

Recital of mortgage.

(*a*) A. is the retiring trustee, B. the continuing trustee, C. and D. the new trustees.

(*b*) A full description, especially if the parcels are long, seems, in such a case as the present, to be unnecessary.

and premises vested in them as aforesaid, and the benefit of the said mortgage security, in manner hereinafter mentioned(*c*). NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of 5*s.* of lawful British mo-

12. ON CHANGE OF TRUSTEES.

Testatum.

For nominal

(*c*) Where trustees advanced money on mortgage, the invariable practice is, not to disclose the trust on the face of the mortgage deed, (*vide ante*, Vol. 5, p. 573), but the mortgage is made to them simply, with a declaration excluding the interest of the representatives of any one or more dying. If the trustees, therefore, are changed, and it becomes necessary to transfer the mortgage to new trustees, in order still to keep the trust out of sight, the mortgage must be transferred by a deed separate from that which contains the appointment of new trustees and the general assignment of the trust property. If there is an entire *change* of trustees, this may be effected by a single conveyance; but if one of the old trustees remains in the trust, two deeds are requisite for the purpose of vesting the mortgage as personal property in the old and new trustees *jointly*, since a person cannot sustain the character of assignor and assignee in the same instrument; and an assignment from the retiring to the new trustee would sever the joint tenancy, rendering the continuing and new trustees tenants in common; which would be an inconvenient mode of holding trust property, because, in such case, the share of a deceased trustee would vest in his representatives, instead of surviving to the others. The precedent in the text exemplifies the mode of vesting the personal property in the new and old trustee, as joint tenants. The mortgaged *lands*, if the mortgage is in fee, can of course be limited by means of a conveyance to uses, to the old and new trustees jointly, without the circuity of a double conveyance; the conveyance being made to a grantee to uses, (who is usually the new trustee), to the use of the old and new trustees. According to the precedent in the text, the deed appears as a mere voluntary assignment, being made by an apparently beneficial owner to a stranger, for a nominal consideration. Perhaps it might be somewhat doubtful, whether a mortgagor would be bound to accept an assignment from a transferree claiming under such a deed; and, therefore, some gentlemen introduce a declaration that the mortgagees are trustees, and have no beneficial interest, conceiving, and it is apprehended rightly, that this averment, which refers to no specific trust, would not render it incumbent on any person paying the mortgage-money to inquire into the nature of the trust. If this plan is adopted, the recital in the text will be varied as follows:—

Remarks upon the precedent in the text.

"AND WHEREAS the sum of £500, so lent and advanced by the said [A.] and [B.] on the said mortgage security, was money belonging to them on a joint account as trustees, and in which they have no beneficial interest; and the said [A.] and [B.] desire and intend to convey and assure the —— and hereditaments so vested in them as aforesaid, and to assign and transfer the said mortgage security in manner hereinafter

Recital that mortgagees are trustees.

12. ON CHANGE OF TRUSTEES.

consideration, [A.] and [B.] release to [C.] and [D.].

ney, paid by the said [C.] and [D.] at or immediately before the sealing and delivery of these presents, to each of them the said [A.] and [B.], the receipts whereof respectively are hereby acknowledged, They the said [A.] and [B.] *Have* bargained, sold, and released, and by these presents *Do* bargain, sell, and release, unto the said [C.] and [D.] and their heirs, in the actual possession of the said [C.] and [D.] now being, by virtue of a bargain and sale thereof made to them by the said [A.] and [B.], for a pecuniary consideration, by an indenture bearing date the day next before the day of the date of these presents, for the term of one year, and by force of the statute for transferring uses into possession:

Parcels.

ALL AND SINGULAR the said two pieces or parcels of land, and other the freehold hereditaments and premises by the said indentures of the —— and —— days of —— conveyed and assured unto and to the use of the said [A.] and [B.], their heirs and assigns, with their rights, members, and

And the reversion.

appurtenances; And the reversion and reversions, remainder and remainders, rents, issues, and profits, of the hereditaments and premises hereby released or otherwise assured, or intended so to be; And also, all the estate, right,

And all the estate.

title, interest, use, trust, property, claim, and demand whatsoever, both at law and in equity, of the said [A.] and [B.]

Habendum to [C.] and [D.] and their heirs, to the use of [B.], [C.], and [D.] in fee.

in and to the said hereditaments and premises: TO HAVE AND TO HOLD the pieces or parcels of land, hereditaments, and premises hereby released or intended so to be, with their appurtenances, unto the said [C.] and [D.], and their heirs; TO THE USE of the said [B.], [C.], and [D.], their heirs and assigns, for ever, subject, nevertheless, to the proviso for redemption contained in the hereinbefore-recited

Further *testatum*.

indenture of mortgage. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of 5*s.* of lawful money aforesaid, paid by the said [E.] at or imme-

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expressed. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said desire and intention, and in consideration," &c.

Another, and perhaps a preferable mode is, to treat the transaction as an ordinary transfer of mortgage between beneficial owners, and introduce into the deed a pecuniary consideration, equal to the amount of the mortgage debt, leaving it to the office of a separate contemporaneous deed to declare the trusts, and explain the real nature of the transaction.

diately before the sealing and delivery of these presents to each of them the said [A.] and [B.], the receipts whereof respectively are hereby acknowledged, they the said [A.] and [B.] *Have* bargained, sold, assigned, transferred, and set over, and by these presents *Do* bargain, sell, assign, transfer, and set over unto the said [E.], his executors, administrators, and assigns, *Firstly*, ALL THAT the messuage or tenement hereinbefore mentioned, and all other the leasehold premises assigned to the said [A.] and [B.], their executors, administrators, and assigns, by the hereinbefore-recited indenture of mortgage of the —— day of ——, with their appurtenances; *Secondly*, All that the principal sum of £500 secured by the said indenture, with all sums now due, or which henceforth may become due, in respect of the interest of the said sum of £500, and the full benefit of all the covenants, bonds, and other securities for the payment of the same principal sum and interest (*d*); *And* all the estate, right, title, interest, property, possibility, claim, and demand whatsoever, both at law and in equity, of them the said [A.] and [B.], in, to, or out of the same premises respectively, together with full power and authority to the said [E.], his executors, administrators, or assigns, and also to any person or persons whom he or they may appoint as his or their substitute or substitutes, or any of them, to ask, demand, sue for, recover, and receive the said sum of £500 and interest, or any part thereof, in the names or name of them, the said [A.] and [B.], or of either of them, and to give effectual discharges for the same; TO HAVE AND TO HOLD the said messuage and tenement, and other the premises firstly hereinbefore referred to, unto the said [E.], his executors, administrators, and assigns, henceforth during all the residue now unexpired of the term of ninety-nine years granted thereof as aforesaid, and for all other the estate, term, and interest of the said [A.] and [B.] therein, by virtue of the hereinbefore-recited indenture of mortgage; subject, nevertheless, to the proviso for redemption contained in the said indenture; AND TO HAVE, RECEIVE, AND TAKE the said principal sum of £500 and interest, and other the premises secondly hereinbefore referred to, unto the said [E.], his exe-

12. ON CHANGE OF TRUSTEES.

[A.] and [B.] assign to [E.],

The principal sum and interest and the benefit of all covenants, &c.

And all the right, &c.

Habendum.

(*d*) The debt not being assignable *at law*, of course remains vested in the old trustees, in whose names any action must be brought. It seems to be usual, even in the case of equitable interests, to assign them in the manner here adopted.

12. ON CHANGE OF TRUSTEES.

Upon trust to assign to continuing and new trustees.

cutors, administrators, and assigns, as and for his and their own moneys and effects; UPON TRUST, nevertheless, as to all and singular the premises hereby assigned, to the intent that he the said [E.], his executors or administrators, shall forthwith, or as soon as conveniently may be, by an indorsement to be made on these presents, assign and transfer the said premises unto the said [B.], [C.], and [D.], their executors, administrators, and assigns, [to be held by them as joint tenants, and not as tenants in common (*e*)]. AND the said parties hereto do respectively declare that the sum of £500 so to be assigned as aforesaid is money belonging to them the said [B.], [C.], and [D.], on a joint account; And they the said parties do hereby direct and appoint, that, in the event of the death of any one or more of them the said [B.], [C.], and [D.], during the continuance of the said sum of £500, or any part thereof, on this security, the same, and the interest thereon, or such part of the same as from time to time shall remain unpaid, shall be payable to the survivors or survivor of them the said [B.], [C.], and [D.], or the executors or administrators of such survivor (as the case may be), in exclusion of the executors or administrators of such one or more of them as shall have departed this life, or shall first have departed this life (as the case may be), as aforesaid, any rule of equity to the contrary notwithstanding (*f*). AND each of them, the said [A.] and [B.], so far as respects his own acts and deeds, but no farther or otherwise, doth hereby for himself, his heirs, executors, and administrators, covenant with the said [C.] and [D.], and their heirs, and also with the said [E.], his executors, administrators, and assigns, that they the said [A.] and [B.] have not, nor hath either of them, at any time or times heretofore, made, done, committed, or executed, or knowingly suffered, any act, deed, matter, or thing whatsoever, by means whereof the pieces or parcels of land, messuage, and other hereditaments, principal sum of £500 and interest, and premises hereby released and assigned respectively, or intended so to be, or any of them, or any part thereof, are or is incumbered or prejudicially affected in title, estate, or otherwise howsoever. IN WITNESS &c.

Declaration that money belongs to mortgagees on a joint account.

Covenant by [A.] and [B.] that they have not incumbered.

(*e*) But affirmative words are not in this or any other case necessary to create a joint tenancy.

(*f*) This provision is requisite, notwithstanding that there may have been a similar clause in the mortgage, as such clause would not extend to the present transferrees.

13. TRANSFER *of* MORTGAGE *on Change of* TRUSTEES (*indorsed on the last Precedent*). 13. ON CHANGE OF TRUSTEES.

KNOW ALL MEN BY THESE PRESENTS, *That* the within-named [E.], in performance and in execution of the trust reposed in him by the within-written indenture, and in consideration of 10*s.* of lawful British money paid to him the said [E.], by the within-named [B.], [C.], and [D.], immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *Hath* bargained, sold, assigned, transferred, and set over, and by these presents *Doth* bargain, sell, assign, transfer, and set over unto the said [B.], [C.], and [D.], their executors, administrators, and assigns; *Firstly*, ALL AND SINGULAR the messuage or tenement, and other the leasehold premises, which, by the within-written indenture, were assigned or otherwise assured unto the said [E.], his executors, administrators, and assigns, with their appurtenances; *Secondly*, ALL AND SINGULAR the principal and interest moneys, powers, and authorities, which by the within-written indenture were assigned, given, or otherwise assured unto the said [E.], his executors, administrators, and assigns; And all the estate, right, title, property, possibility, claim and demand whatsoever, both at law and in equity, of him the said [E.] in, to, or out of the same premises respectively; TO HAVE AND TO HOLD the said messuage or tenement, and other the premises firstly hereinbefore described or referred to, with the appurtenances, unto the said [B.], [C.], and [D.], their executors, administrators, and assigns, henceforth for all the residue now unexpired of the term of ninety-nine years, the residue whereof was assigned to the said [E.], his executors, administrators, and assigns, in and by the within-written indenture; AND TO HAVE, RECEIVE, TAKE, AND ENJOY the said principal money and interest, and all other the premises secondly hereinbefore described or referred to, unto the said [B.], [C.], and [D.], their executors, administrators, and assigns, as and for their own moneys and effects, as fully and effectually as he the said [E.] can or may assign or otherwise assure the same; And the said [E.] doth hereby irre-

13. ON CHANGE OF TRUSTEES.

vocably appoint the said [B.], [C.], and [D.], and the survivors and survivor of them, his executors or administrators, the substitutes or substitute of the said [E.] for all the purposes mentioned or referred to in and by the within-written indenture. AND he the said [E.] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [B.], [C.], and [D.], their executors, administrators, and assigns, that he the said [E.] hath not heretofore made, done, committed, or executed, or knowingly suffered, any act, deed, matter, or thing whatsoever, by means whereof the messuage or tenement, principal money and interest, and premises hereby assigned or intended so to be, or any part thereof respectively, are or is incumbered or prejudicially affected in title, estate, or otherwise howsoever. IN WITNESS &c.

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14. TERM AND FEE TO TRANSFERREE AND NEW TRUSTEE.

14. [TRANSFER *of a* MORTGAGE *of* FREEHOLDS *which were limited to the* MORTGAGEE *for a* TERM *of* YEARS, *and to a* TRUSTEE *for* SALE *in* FEE-SIMPLE, *subject to the Term. The* MORTGAGOR *does* NOT JOIN (*a*). *A* NEW TRUSTEE *for Sale is appointed.*

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*transferror*], of &c., of the first part; [*retiring trustee*], of &c., of the second part; [*transferree*], of &c., of the third part; and [*new trustee*], of &c., of the fourth part.

Recital of mortgage.

WHEREAS, by indentures of lease and release bearing date

Remarks on the above precedent.

Form of transfer where mortgagor joins.

(*a*) [This precedent affords an example of a transfer of a mortgage in fee, with a power of sale, by means of a single deed—the original mortgage having been framed in conformity with the precedent given, *ante*, Vol. 5, p. 585. If the mortgagor joins in the transfer, and a further sum is advanced, and a new proviso for redemption limited, the retiring trustee may convey the fee to the new trustee by way of *grant*, thus avoiding the expense of a lease for a year (*ante*, Vol. 5, p. 507); and a new proviso for redemption, and trusts for sale, and a power of appointing new trustees, will be inserted, *ut ante*, Vol. 5, p. 587, with covenants by the mortgagor, *ut ante*, p. 320.]

14. TERM AND FEE TO TRANSFERREE AND NEW TRUSTEE.

respectively on or about the —— and —— days of ——, 1839, the release being expressed to be made between [*mortgagor*], of the first part, the said [*transferror*], of the second part, and the said [*retiring trustee*], of the third part, in consideration of the sum of £200 then paid and advanced by the said [*transferror*] to the said [*mortgagor*], the said [*mortgagor*] did convey and assure unto the said [*retiring trustee*], and his heirs, *All that* (*describe parcels*), with their appurtenances, to hold the same unto the said [*retiring trustee*] and his heirs, to the use of the said [*transferror*], his executors, administrators, and assigns, for the term of 1,000 years thenceforth, and subject to the said term, to the use of the said [*retiring trustee*], his heirs and assigns, for ever, in trust for the said [*transferror*], his heirs or assigns, subject, nevertheless, to a proviso or condition in the said indenture of release contained for the surrender and re-conveyance of the said —— and hereditaments, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, of the sum of £200, with interest for the same after the rate of £5 per centum per annum, on a day therein mentioned and since past. In which indenture of release was contained a covenant on the part of the said [*mortgagor*], to pay the said principal sum and interest on the day therein mentioned, and also a proviso or power authorizing the said [*retiring trustee*], his heirs or assigns, in case default should be made in payment of the said sum of £200 and interest at the time therein mentioned, after such notice as is therein required, to sell and dispose of the said —— and hereditaments, in manner therein provided: AND WHEREAS, by the now reciting indenture of release, it was also provided, that, in case the said [*retiring trustee*] should become unwilling or unable to act in the trusts thereof, before the same should be fully executed and performed, then it should be lawful for the said [*transferror*], his executors, administrators, or assigns, by any deed to be attested by one witness, to nominate and appoint any fit person to supply the place of the said [*retiring trustee*], And that immediately after any such appointment, the said —— and hereditaments, or so much thereof as should not have been sold under or by virtue of the now reciting indenture, should remain and be to the use of the new trustee so appointed, his heirs and assigns, for ever, subject, nevertheless, and without prejudice, to the term of

14. TERM AND FEE TO TRANSFERREE AND NEW TRUSTEE.

1,000 years thereby limited: and that such new trustee should have and might exercise all the powers and authorities thereby vested in the said [*retiring trustee*], in the same manner, to all intents and purposes, as if he had been thereby appointed a trustee; (*recite that principal sum is still due—interest paid up—that no sale has taken place—and agreement for transfer of mortgage*).

Of intention to appoint a new trustee for sale.

AND WHEREAS the said [*retiring trustee*], being desirous of retiring and being discharged from the trusts of the above-recited indenture of mortgage, the said [*new trustee*], at the request of the said [*transferror*] and [*transferree*], has consented and agreed to become a trustee in the room of the said [*retiring trustee*].

Testatum:

NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £200 of lawful British money paid by the said [*transferree*] to the said [*transferror*], at or before the execution of these presents, the receipt whereof the said [*transferror*] doth hereby acknowledge and therefrom doth release and discharge the said [*transferree*], his executors, administrators, and assigns, he the said [*transferror*]

Transferror assigns mortgage-premises,

Doth by these presents bargain, sell, assign, and transfer unto the said [*transferree*], all and singular the —— and hereditaments hereinbefore described, and comprised in the above-recited indenture of release and mortgage, and therein expressed to be thereby limited to the use of the said [*transferror*], his executors, administrators, and assigns, for the term of 1,000 years as aforesaid, together with the rights, members, and appurtenances of the said —— and hereditaments, and every of them;

and all the estate,

And all the estate, right, title, interest, trust, term and terms of years yet to come and unexpired, property, claim, and demand whatsoever, at law and in equity, of him the said [*transferror*], in, to, and out of the same and every part thereof;

and all deeds.

And also, all deeds, evidences, and writings whatsoever, relating to or concerning the same hereditaments and premises or any part thereof, which he the said [*transferror*] now hath in his custody or possession, or can obtain without suit at law or in equity,

Habendum, to transferree, for residue of term of 1,000 years.

TO HAVE AND TO HOLD the —— and hereditaments and premises hereinbefore expressed to be hereby assigned, unto the said [*transferree*], his executors, administrators, and assigns, henceforth, during all the residue and remainder now to come and unexpired of the said term of 1,000 years therein, and for all other the estate, term, and interest of the said

[*transferror*] therein, *subject, nevertheless,* to such right or equity of redemption (if any) on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, of the said sum of £200 and interest, as is or may be now subsisting under or by virtue of the hereinbefore-recited indenture of release and mortgage. AND THIS INDENTURE FURTHER WITNESSETH, that, for the consideration aforesaid, he the said [*transferror*] *Doth* by these presents (*assignment of mortgage debt and power of attorney, ut ante, p.* 325). AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the premises, the said [*transferror*], at the request and by the direction of the said [*transferree*], and by virtue and in execution of the hereinbefore-recited power and authority, and of every other power and authority enabling him in this behalf, *Doth* by this deed, sealed by him in the presence of and attested by the witness whose name is hereunder written, nominate and appoint the said [*new trustee*], in the room and stead of the said [*retiring trustee*], to be a trustee under the hereinbefore-recited indenture of mortgage, for the purpose of performing and exercising all the trusts, powers, and authorities therein contained and now remaining to be performed; *And* the said [*transferror*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*transferree*], his executors, administrators, and assigns, and also with the said [*new trustee*] (*b*), his heirs and assigns, in manner following, that is to say, *That* he the said [*transferror*] hath not at any time, heretofore, done, committed, executed, or willingly permitted any act, matter, or thing whatsoever, by means whereof the —— and premises hereby assigned, or intended so to be, are, is, can, shall, or may be in anywise impeached, charged, incumbered, or in any manner prejudicially affected, in title, charge, estate, or otherwise howsoever, or by means whereof the said [*transferror*] has become unable to appoint the said [*new trustee*] to be a trustee under the above-recited indenture of mort-

14. TERM AND FEE TO TRANSFERREE AND NEW TRUSTEE.

subject to subsisting equity of redemption.

Second *testatum*:—

Transferror assigns debt.

Third *testatum*:—

Transferror appoints new trustee.

Covenants by transferror,

—that he has not incumbered.

(*b*) [Although the benefit of covenants entered into by the transferror, or by the retiring trustee, with the new trustee, would not, according to the prevailing opinion, pass to future transferrees of the mortgage, yet, as the new trustee may possibly be retained after the present transferree has transferred his security, it is proper to make such trustee a covenantee as above.]

As to covenants with mortgagee-trustee.

14. TERM AND FEE TO TRANSFERREE AND NEW TRUSTEE.

gage, in the room of the said [*retiring trustee*], in manner hereinbefore contained, and according to the true intent and meaning of these presents, or by means whereof the use of the ——, hereditaments, and premises comprised in the above-recited indenture of release and mortgage, and hereby assigned or intended so to be, or any of them, is, or can be in any manner prevented from vesting in the said [*new trustee*], his heirs and assigns, subject to the aforesaid term of 1,000 years, (*and will not release debt, &c., ut ante, p.* 327); And the said [*retiring trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*transferree*], his executors, administrators, and assigns, and also with the said [*new trustee*], his heirs, and assigns, that (*he has not incumbered the hereditaments comprised in the above-recited indenture of release and mortgage*). (*Add covenant by transferree to indemnify transferror, ut ante, p.* 327). IN WITNESS &c.

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15. BY THREE MORTGAGEES, AND FURTHER CHARGE BY MORTGAGOR, UNDER A POWER.

15. TRANSFER *of* THREE MORTGAGES *for* TERMS, *and* CONFIRMATION *of one of those Terms by a* TENANT *for* LIFE, *under a* POWER *in an* ACT *of* PARLIAMENT, *to secure a* FURTHER SUM *advanced by the* TRANSFERREE *of the* FORMER MORTGAGES: NEW PROVISO *for* REDEMPTION *on Payment of the* AGGREGATE SUM ADVANCED: ASSIGNMENT *of two of the* MORTGAGE TERMS *to* TRUSTEES *for the* TRANSFERREE (*a*). (*Variation where the* OLD MORTGAGES *are* TRANSFERRED, *subject to the* SUBSISTING EQUITY *of* REDEMPTION: AGREEMENT *by the Owner of a* RENT-CHARGE NOT *to* DISTRAIN *upon the mortgaged Lands*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the Right Honourable Frederick Earl of [D.], who

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Remarks upon the precedent in the text.

(*a*) The Editor has commonly avoided giving special forms, because they are not adapted for general use; and very many of those composing the large collection made by the late Mr. Bythewood have been rejected on this ground. In the present instance, the plan has been departed from, and a precedent, rather special in its provisions, has been inserted, on account of the variety and utility of those provisions. It also affords

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survived the Right Honourable Richard Lord Viscount [S.], his co-trustee and co-executor named in and appointed by the last will and testament of the Right Honourable Thomas Earl of [G.], deceased, of the first part; [*executor of first mortgagee*], of &c., the only acting executor named in and appointed by the last will and testament of [*first mortgagee*], late of ——, deceased, of the second part; [A.], of &c., and [B.] (*b*), of &c., of the third part; [*second mortgagee*], of &c., of the fourth part; [C.] and [D.] (*c*), of &c., of the fifth part; Thomas Edward [M.] of ——, and the Honourable

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a precedent, not hitherto furnished, of a deed of transfer, comprising *several* mortgages simultaneously paid off out of the money advanced by the transferree. To those who think highly of the judgment of the late Editor, it will be a recommendation of the present form, that it appears, by a memorandum indorsed upon it, to have had his particular approbation. There are three modes of framing the deed under such circumstances as the present:—1st, That of simply transferring the several mortgage debts to the transferree, with power to sue, and assigning the lands subject to the subsisting equity of redemption, superadding only a new proviso for redemption and covenant for payment by the mortgagor *with respect to the further advance*. 2ndly, That of extinguishing the old debt, and inserting a new proviso for redemption and covenant for payment by the mortgagor as to the *entire* sum advanced. 3rdly, Adding a new proviso with respect to the present advance only, keeping on foot the equity of redemption under the former mortgages, but with a new covenant to pay those mortgage debts. The plan followed in the draft, from which the precedent in the text has been taken, was that of transferring the old debts, but inserting a new proviso and covenant embracing the whole. Perhaps, under the special circumstances of the present case, this might be an advisable precaution; but, in general, where a new proviso and covenant to pay are limited, the old debt ought not to be transferred, since it is extinguished. The objection to merely assigning the existing debts, where several mortgages are transferred, is, that the transferree must bring distinct actions in the names of the *respective* mortgagees. If the deed is prepared according to the form of the precedent in the text, it would be prudent to stamp it as a mortgage for £10,000; but, if the equity of redemption under the existing mortgages remained unchanged, the *ad valorem* duty might be confined to the farther advance. Variations, therefore, adapted to such an alteration of the form, have been added. Of course, if there was any doubt as to the validity of any of the existing mortgages, the mode of framing the draft adopted in the precedent is to be preferred.

(*b*) A. and B. were *cestui que trusts* of the first mortgage.

(*c*) C. and D. are the persons in whom the third mortgage term was vested, as trustees for Lady B., afterwards Lady M., the third mortgagee.

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Lady Charlotte [M.] (*d*), his wife, heretofore called Lady Charlotte [B.], one of the daughters of the Right Honourable Henry Earl of [G.], of the sixth part; [R.], of &c., and [S.], of &c., of the seventh part; the said Henry Earl of [G.], of the eighth part; [*transferree*], of &c., of the ninth part; [*trustee of second mortgage term*], of &c., of the tenth part; and [*trustee of third mortgage term*], of &c., of the eleventh part: WHEREAS the Right Honourable Thomas Earl of [G.], deceased, duly made and published his last will and testament in writing, bearing date the —— day of ——; And after reciting that he had then lately made a settlement of his [N.] and other his estates in [C.], upon the marriage of his son Henry (now the aforesaid Henry Earl of [G.]) with Charlotte, then the wife of his said son; And that in and by such settlement, which he did thereby ratify and confirm, the reversion in fee-simple of those settled estates was reserved to him the said testator on failure of male issue of his said son, subject to such precedent charges as were or should happen to be thereupon, according to the terms of the said settlement, the said testator did thereby give and devise the said reversion unto and to the use of the said Richard Lord Viscount [S.], and Frederick Earl of [D.], and their heirs, in trust to settle the same in manner therein particularly mentioned; And also reciting that he the said testator was then seised of or entitled to some considerable estates besides the estates comprised in his son's settlement, which, for distinction sake, he called his unsettled estates, (and which comprise, among other hereditaments, the manor and hereditaments hereinafter mentioned and described, and intended to be hereby assigned), he the said testator did thereby give and devise all such his said unsettled estates whatsoever and wheresoever, which he was seised of or entitled to, and as well freehold as leasehold, or of whatever other tenure, over which he had any disposing power, unto and to the use of the said [*trustees*], their executors, administrators, and assigns, upon trust, by mortgage, sale, or other disposition of the same, or a competent part thereof, at the discretion of the trustees for the time being, to levy, raise, and

Recital of will of late owner.

(*d*) Lady Charlotte M., the third mortgagee, previously to her marriage, assigned the mortgage-money to R. and S., who were trustees of her marriage settlement.

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apply so much money as should be requisite in aid of his said personal estate (not specifically given) for the due payment of his debts, funeral expenses, and also of such pecuniary legacies as should consist of sums in gross; and by, with, and out of the rents, issues, and profits of such unsettled estates in the meantime and until the payment of such his debts and legacies as should carry interest, duly to pay such interest, but in aid only of his personal estate not specifically given, and then to pay the several annuities, as well those thereby given as any other which might be due from him or his estate; and as to all such and so much of his unsettled estate as should be unsold or undisposed of for the purposes aforesaid, whether freehold or copyhold, or both, in trust to settle the same, (subject to and charged and chargeable with such annuities as he should leave), as nearly as might be to the several uses of his son's said marriage settlement, and to the directions thereinbefore contained of and concerning the reversion of the premises comprised therein, but with the difference therein mentioned; And after giving several annuities which have since determined, and several pecuniary legacies which have since been paid, the said testator appointed his said trustees executors of his said will; AND WHEREAS the said testator, Thomas Earl of [G.], departed this life on or about the —— day of ——, without having altered or revoked his said will; and, soon after his decease, the said Richard Lord Viscount [S.] and Frederick Earl of [D.] duly proved the same in the proper Ecclesiastical Court; AND WHEREAS, by indenture of mortgage, bearing date the —— day of ——, and made between the said Richard Lord Viscount [S.] and Frederick Earl of [D.] of the first part; the said Henry Earl of [G.], of the second part; and the said [*first mortgagee*], (since deceased), of the third part; In consideration of the sum of £1,500 to the said Richard Lord Viscount [S.] and Frederick Earl of [D.], or one of them, with the consent of the other of them, and of the said Henry Earl of [G.], paid by the said [*first mortgagee*], they the said Richard Lord Viscount [S.] and Frederick Earl of [D.], with the privity and approbation of the said Henry Earl of [G.], did bargain, sell, and demise, and the said Henry Earl of [G.] did grant, ratify, and confirm unto the said [*first mortgagee*], his executors, administrators, and assigns, *All that* the manor or lordship, or reputed manor or lordship, of [K.], in the county

Recital of testator's death and probate of will;

—of first mortgage.

15. BY THREE MORTGAGEES, AND FURTHER CHARGE BY MORTGAGOR, UNDER A POWER.

of [N.], with the rights, royalties, members, and appurtenances thereunto belonging, and other the hereditaments hereinafter mentioned, and intended to be hereby assigned; *To hold* the same unto the said [*first mortgagee*], his executors, administrators, and assigns, thenceforth, for the term of 500 years, without impeachment of waste, by way of mortgage, for securing unto the said [*first mortgagee*], his executors, administrators, and assigns, the payment of the said sum of £1,500, on a day therein mentioned and since past, together with interest for the same after the rate of £5 per centum per annum, reducible to £4 per centum per annum, on regular payment of such interest within three calendar months next after each half-yearly day of payment: AND WHEREAS, by a deed poll under the hand and seal of the said [*first mortgagee*], bearing date the said —— day of ——, 18—, the said [*first mortgagee*] did thereby declare, that the sum of £1,500 secured by the lastly in part recited indenture was not his money, and that his name was inserted and stood in the said indenture of mortgage, not for his own use and benefit, but in trust, as to £1,000, part of the said sum of £1,500, for the said [A.], his executors, administrators, and assigns, and as to £500, the residue thereof, in trust for the said [B.], his executors, administrators, and assigns (*e*): AND WHEREAS the several debts, legacies, and funeral expenses of the said testator, Thomas Earl of [G.], by his said will charged upon his unsettled estates, have been duly paid and satisfied, and the several annuities, by the same will charged upon the said unsettled estates, have since respectively determined, which he the said Frederick Earl of [D.] doth hereby declare: AND WHEREAS, by an act of Parliament, passed in the —— year of her present Majesty's reign, intituled "An Act to empower the Right Honourable Earl of [G.] to charge his settled estates in the counties of [N.] and [C.] with the sum of £15,000, in lieu of the right of him the said Henry Earl of [G.], and the other tenants for life of the said estates, to cut down timber growing thereon," after reciting as or to the effect therein recited, it was among other things

Declaration of trust by first mortgagee.

—That testator's debts and legacies have been paid.

Act of Parliament empowering mortgagor to charge the estate.

(*e*) A mortgagor is not bound to pay the expense of a declaration of trust executed by the mortgagee in favour of a third person, whose money he had advanced, as this is a mere *ex parte* transaction of the mortgagee, with which the mortgagor has no concern. See *ante*, Vol. 5, p. 383.

As to the allowance of conveyancing and other charges between mortgagor and mortgagee.

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enacted, that it should and might be lawful for the said Henry Earl of [G.], at any time or times during his natural life, by any deed or deeds, writing or writings, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, or by any testamentary writing to be signed and published as therein mentioned, to subject and charge all or any of the manors and other hereditaments therein mentioned to be situate in the counties of [N.] and [C.], and among which are included the manor and other hereditaments hereinafter mentioned, and intended to be hereby charged and assigned, but subject and without prejudice as to the manor and other hereditaments hereinafter mentioned, and intended to be hereby charged and assigned, to certain charges or incumbrances therein mentioned, and which have been since duly paid and satisfied, to and with any sum or sums of money not exceeding in the whole the sum of £15,000, for his own use, and to be applied and disposed of as he should think proper, together with lawful interest for the same; and, for the better securing the payment thereof, to grant and demise the hereditaments so to be charged, with the appurtenances, to any person or persons for any term or number of years; so that such term or terms should be made redeemable, or be made to cease, on repayment of the principal money thereby to be secured, and the interest thereon, and so that the said Henry Earl of [G.] should, by any such instrument taking effect in his lifetime, covenant to pay and keep down the interest on such principal money during his life: AND WHEREAS, by indenture bearing date the —— day of ——, 18—, and made between the said Henry Earl of [G.], of the one part, and the said [*second mortgagee*], of the other part; the said Henry Earl of [G.], in consideration of £1,500 paid to him by the said [*second mortgagee*], by virtue of the power or authority to him the said Henry Earl of [G.] by the hereinbefore in part recited act of Parliament given or limited, and of every other power and authority in anywise enabling him, did subject and charge (among other hereditaments) the manor and other hereditaments hereinafter mentioned, and intended to be hereby charged and assigned, to and with the payment unto the said [*second mortgagee*], his executors, administrators, and assigns, of the sum of £1,500, with interest after the rate of £5 per centum per annum, on or at the days and times and in manner therein-

Recital of second mortgage.

15. BY THREE MORTGAGEES, AND FURTHER CHARGE BY MORTGAGOR, UNDER A POWER.

after mentioned for the payment thereof; and in the said indenture is contained a covenant on the part of the said Henry Earl of [G.] to pay and keep down the interest on the said sum of £1,500, as required by the said act of Parliament; *And it is* by the indenture now in recital *also witnessed*, that, for securing the repayment of the said sum of £1,500 and interest, he the said Henry Earl of [G.], by virtue of the power or authority to him for that purpose by the said act given, and of every other power and authority him enabling, did grant and demise unto the said [*second mortgagee*], his executors, administrators, and assigns, the several manors, lordships, and other hereditaments, which by the in part recited act the said Henry Earl of [G.] was empowered to charge with the said sum of £1,500 and interest, and to grant and demise for securing the same; *To hold* the same unto the said [*second mortgagee*], his executors, administrators, and assigns, from the day next before the day of the date thereof for the term of 1,000 years; subject, nevertheless, to the proviso or agreement for redemption therein contained upon payment of the sum of £1,500 unto the said [*second mortgagee*], his executors, administrators, or assigns, at or upon the days or times and in manner therein mentioned (*f*); AND WHEREAS, by indenture bearing date the —— day of ——, 18—, and made between the said Henry Earl of [G.], of the first part; the said Lady Charlotte [M.], (then Lady Charlotte [B.]), of the second part; and the said [C.] and [D.], of the third part, reciting an indenture bearing date the —— day of ——, 18—, and made between the said Henry Earl of [G.], of the one part, and the said Lady Charlotte [M.], (then Lady Charlotte [B.]), of the other part; whereby, after stating (among other things) that the said Lady Charlotte [M.], (then Lady Charlotte [B.]), had advanced, or caused to be advanced, to the said Henry Earl of [G.], the sum of £5,000, and that the said Henry Earl of [G.] had, by his bond or obligation bearing even date with the same indenture, become bound to the said Lady Charlotte [M.], (then Lady Charlotte [B.]), her executors, administrators, or assigns, in the penal sum of £10,000, conditioned for the payment to

Recital of third mortgage.

(*f*) The act requires that the term should be made to cease "on repayment of the principal and interest money," generally; and, therefore, it is conceived the redemption should not be confined to payment on any particular day.

15. BY THREE MORTGAGEES, AND FURTHER CHARGE BY MORTGAGOR, UNDER A POWER.

her or her executors, administrators, and assigns of £5,000 and interest, the said Henry Earl of [G.] did covenant and agree with the said Lady Charlotte [M.], (then Lady Charlotte [B.]), that, in consideration of the said sum of £5,000, and for securing the re-payment thereof, with interest, he the said Henry Earl of [G.], would, immediately after a certain bill then brought into Parliament should have been passed into an act, (meaning the bill introduced into Parliament previously to the passing of the act hereinbefore recited), pay, or cause to be paid, unto the said Lady Charlotte [M.], (then Lady Charlotte [B.]), her executors, administrators, or assigns, the said sum of £5,000 and interest, or otherwise would effectually subject and charge all the manors, estates, and hereditaments which he should have power to charge by the said act, with payment of the same sum and interest, and would grant and demise the said hereditaments so to be charged, with the appurtenances, to two or more trustees, to be nominated by the said Lady Charlotte [M.], (then Lady Charlotte [B.]), for a term of 2,000 years, subject to redemption on payment of the said principal sum and interest; and also reciting in the said indenture of the —— day of ——, 18—, the hereinbefore in part recited act of Parliament; it was by the indenture of the —— day of ——, 18—, now in recital, witnessed, that, in consideration of the sum of £5,000 due and owing on the said bond, he the said Earl of [G.], by virtue of the power and authority to the said Henry Earl of [G.] for that purpose given by the hereinbefore in part recited act, and of every other power and authority enabling him, by the deed or instrument in writing now in recital, did subject and make chargeable (but subject and without prejudice as in the said act is mentioned) the manors, lands, and hereditaments in the said indenture mentioned, (and among which are included the manor and other hereditaments hereinafter mentioned, and intended to be hereby charged and assigned), with the sum of £5,000, and interest at the rate and at the times therein mentioned; And in the said indenture was contained a covenant on the part of the said Henry Earl of [G.], during his life to pay and keep down the interest of the said principal sum of £5,000, as required by the said act; *And it was* by the indenture now in recital witnessed, that, for securing the repayment of the said sum of £5,000 and interest thereon, to the said Lady Charlotte [M.], (then Lady Charlotte [B.]),

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he the said Henry Earl of [G.], by virtue of the power and authority given to him the said Henry Earl of [G.] by the said act, and of every other power and authority him in anywise enabling thereunto, did, at the request and on the nomination of the said Lady Charlotte [M.], (then Lady Charlotte [B.]), grant and demise unto the said [C.] and [D.], their executors, administrators, and assigns, the several manors and other hereditaments thereinbefore by him the said Henry Earl of [G.], charged with the payment of the said sum of £5,000 and interest as aforesaid, *To hold* the same unto the said [C.] and [D.], their executors, administrators, and assigns, from the day next before the day of the date of the indenture now in recital, for the term of 2,000 years, subject to a proviso for redemption of the said premises on payment of the said sum of £5,000 and interest unto the said Lady Charlotte [M.], (then Lady Charlotte [B.]), her executors, administrators, or assigns, according to the condition of the therein and hereinbefore-recited bond (*g*): AND WHEREAS, by indenture bearing date the —— day of —— now last past, and made between the said Henry Earl of [G.], of the first part; the said Lady Charlotte [M.], (then Lady Charlotte [B.]), of the second part; the said Thomas Edward [M.], of the third part; the said [R.] and [S.], of the fourth part; the said [C.] and [D.], of the fifth part; and the Right Honourable William Lord [P.], and [P. S.], esquire, of the sixth part; (being the settlement made previously to and in contemplation of the marriage of the said Thomas Edward [M.] with the said Lady Charlotte, his wife; she the said Lady Charlotte [M.] (then Lady Charlotte [B.]), with the privity of the said Thomas Edward [M.], did bargain, sell, assign, transfer, and set over unto the said [R.] and [S.], their executors, administrators, and assigns, the sum of £5,000 to the said Lady Charlotte [M.], (then Lady Charlotte [B.]), in and by the hereinbefore-mentioned bond of the —— day of ——, 18—, and the said indenture of the —— day of ——, 18—, secured and made payable as aforesaid, together with the interest due and to accrue due for the same, and also the said bond, with full powers to them to receive, recover, and give discharges for the same; *To have and receive* the same to the said [R.] and [S.], their executors, administrators, and

Recital of settlement of mortgage-money on marriage of mortgagee.

(*g*) *Vide* an observation, *ante*, p. 383.

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assigns, in trust, after the solemnization of the said marriage, to assign the said sum of £5,000 and interest to such person or persons, and for such intents and purposes as the said Lady Charlotte [M.] should, notwithstanding her coverture, by any deed, with or without power of revocation, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, [or by her last will and testament in writing, to be by her, or by her direction and in her presence, signed, or to be by her acknowledged to have been so signed, in the joint presence of, and to be attested by, two witnesses (*h*)], from time to time direct or appoint (*i*): AND WHEREAS the said Richard Lord Viscount [S.] hath since departed this life, leaving the said Frederick Earl of [D.] his co-trustee and co-executor named in the

Death of one of the executors of the late owner.

(*h*) [By the 10th section of the stat. 7 Will. 4 & 1 Vict. c. 26, a will made in execution of any power must be executed according to the requisitions of that statute, and needs not be executed according to the requisitions of the power. Powers, therefore, to appoint by will, should either prescribe no formality of execution, or, which is better, should state (as in the text) the formalities required by the statute. The recital, however, in the text, of the power to appoint by will, is superfluous in the present instrument, which is a disposition by deed, and should be omitted.]

(*i*) Where a sum secured by mortgage is settled on marriage, it is advisable to have two deeds, one vesting the security in trustees, the other declaring the trusts upon which they are to hold the money. By the first deed it will be declared generally, that the trustee shall stand possessed of the moneys upon the trust expressed in the contemporaneous instrument, and that the receipts of the trustees shall be good discharges. On the redemption or transfer of the mortgage, it will then be necessary merely to produce the deed vesting the security in the trustees, and the contents of the settlement need not be disclosed. The former deed may, in fact, be delivered up; and thus the necessity of a covenant for production, which trustees are always averse to enter into, is avoided. The recital in the precedent in the text would then stand thus—

As to settlement of mortgage moneys.

"After the solemnization of the said marriage, upon the trusts and for the intents and purposes expressed in a certain indenture, bearing even date with the indenture now in recital, made between &c.; And in the now being recited indenture, it is declared that the receipts or receipt of the said [*trustees*], or the survivor of them, his executors or administrators, or their or his assigns, shall effectually discharge the person or persons paying to them or him the said sum of £5,000 and interest, from all responsibility in respect of the application thereof."

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last will and testament of the said Thomas, late Earl of [G.], deceased, him surviving: AND WHEREAS the said [*first mortgagee*] departed this life some time in the year 18—, having first duly made and published his last will and testament, and thereof appointed the said [*executor*] and the said [*deceased executor*], since deceased, executors; and the said [*executor*] alone hath duly proved the same in the proper Ecclesiastical Court (*j*): AND WHEREAS the sum of £1,500 secured to the said [*first mortgagee*] by the above in part recited indenture of the —— day of ——, 18—, in trust for the said [A.] and [B.] as aforesaid, is still owing upon the same security, but all interest for the same hath been duly paid to the said [A.] and [B.] up to the date of these presents: AND WHEREAS the sum of £1,500 secured to the said [*second mortgagee*] by the above-recited indenture of the —— day of ——, 18—, is still owing to him, but all interest for the same hath been paid up to the day of the date hereof: AND WHEREAS the sum of £5,000 secured to the said Lady Charlotte [M.] in and by the said bond of the —— day of ——, 18—, and the said indenture of the —— day of ——, 18—, and by her assigned to the said [R.] and [S.] by the said indenture of the —— day of —— last past, is still owing upon the same bond and lastly-mentioned indenture of mortgage, but all interest for the same sum of £5,000 hath been duly paid up to the day of the date hereof: AND WHEREAS the said [A.] and [B.] have lately applied to the said Henry Earl of [G.] for payment of the sum of £1,500 so secured in trust for them as aforesaid, and the said [*second mortgagee*] having lately applied to him for payment of the sum of £1,500 so due to him as aforesaid, and the said [R.] and [S.], by the direction of the said Lady Charlotte [M.], (signified as hereinafter mentioned), having also applied to the said Henry Earl of [G.] for payment of the principal sum of £5,000 so assigned to them as aforesaid, and the said Henry Earl of [G.] being at present unable to comply with such applications, and having occasion for the loan of the further sum of £2,000, he the said [*transferree*] hath, at the request of the said Henry Earl of [G.], con-

Death of first mortgagee, and probate of his will.

That principal secured by first mortgage is due.

That principal secured by second mortgage is due.

That principal secured by third mortgage is due.

Application for payment of mortgage-moneys.

Contract by

(*j*) Unless the will contains a specific bequest of the mortgage, and the legatee is made a party to the present deed, it is not necessary to notice more of the will than the appointment of executors. If there is such a bequest, and the executors have assented, the legatee ought to concur in the assignment, as the term will have become vested in the legatee.

As to making the legatee of the mortgage-debt a party to the transfer.

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sented and agreed to advance unto the said [A.] and [B.] the sum of £1,500, and to the said [*second mortgagee*] the like sum of £1,500, and to the said [R.] and [S.] the sum of £5,000, for the payment of which respectively such application hath been made as aforesaid; *And also* to lend and advance unto the said Henry Earl of [G.] the further sum of £2,000 upon his the said [*transferree's*] having a transfer and assignment of the several sums of £1,500, £1,500, and £5,000, so due and owing upon the hereinbefore-recited securities respectively as aforesaid, and also upon having such further charge and security for the payment of the said (*k*) several sums of £1,500, £1,500, £5,000, and £2,000, making together the sum of £10,000 by him the said [*transferree*] agreed to be advanced and lent as aforesaid, and the interest thereon respectively, as hereinafter mentioned,

transferree to pay them off, and advance a further sum.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and also in consideration of the sum of £1,000 of lawful money of Great Britain and Ireland to the said [A.], and of the sum of £500 of like money to the said [B.], at or before the sealing and delivery of these presents, respectively paid by the said [*transferree*], at the request and by the direction of the said Henry Earl of [G.], testified by his executing these presents, the receipt of which said sums of £1,000 and £500, making together the sum of £1,500, they the said [A.] and [B.] *Do* hereby respectively acknowledge, and therefrom they, and also the said [*executor of deceased mortgagee*], respectively, *Do* release and discharge the said [*transferree*], his executors, administrators, and assigns; *And also*, in consideration of the sum of *5s.* paid to the said [*executor of first mortgagee*] by the said [*transferree*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said [*executor of first mortgagee*], at the request and by the direction of the said [A.] and [B.], and also of the said Henry Earl of [G.], (testified as aforesaid), and also the said [A.] and [B.], at the like request, and by the like direction of the said Earl of [G.], (testified as aforesaid), *Have*, and every of them *Hath*, bargained, sold, assigned, and transferred, and by these presents *Do* &c., unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the principal sum of £1,500 secured by

In consideration of principal money paid to *cestuis que trust*, they and first mortgagee by their direction transfer mortgage debt.

Assignment of the first mortgage-money.

(*k*) "sum of £2,000 by him the said [*transferree*]," &c.

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and made payable to the said [*first mortgagee*], deceased, in and by the above in part recited indenture of the —— day of ——, 18—, and all interest due and to grow due thereon, and all benefit and advantage thereof; *And all* the right, title, interest, claim, and demand whatsoever, both at law and in equity, of them the said [*executors of first mortgagee*], [A.], and [B.], and of every of them, in, to, and upon the same, [together with all powers, remedies, and means whatsoever, requisite or necessary for suing for, recovering, receiving, and giving effectual discharges for the said principal money and interest, and every part thereof (*l*)]; To HAVE, RECEIVE, take, and enjoy the principal sum of £1,500, interest, and premises intended to be hereby assigned as aforesaid unto and by the said [*transferree*], his executors, administrators, and assigns, henceforth to his and their own use and benefit absolutely. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the sums of £1,000 and £500, so paid to them the said [A.] and [B.] respectively by the said [*transferree*] as aforesaid; And also, in consideration of 5*s.* to each of them the said [*executor of first mortgagee*], [A.], and [B.] also paid by the said [*transferree*] at or before the sealing and delivery of these presents, the receipts whereof are hereby acknowledged, he the said [*executor of first mortgagee*], at the request and by the direction as well of the said [A.] and [B.] as of the said Henry Earl of [G.] (testified as aforesaid), *Hath* bargained, sold, assigned, and transferred, and by these presents *Doth* &c., and the said [A.] and [B.], at the like request, and by the like direction of the said Earl of [G.], *Have* remised, released, and quit-claimed, and by these presents, *Do* remise, &c., unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the manor or lordship, or reputed manor or lordship, of [Q.], in the said county of [N.], with the rights, royalties, members, and appurtenances thereunto belonging and appertaining; And all the estate, &c.; And all deeds, &c., To HAVE AND TO HOLD the said manor, hereditaments, and all and singular other the premises hereinbefore mentioned to be hereby assigned unto the said [*transferree*], his executors, admini-

Further *testatum*.

Assignment of the first mortgage term to transferree.

Habendum to transferree for residue of 500 years' term.

(*l*) As the mortgagor enters into fresh covenants for payment, and therefore it cannot be intended that the transferree shall be authorized to bring actions on the existing securities in the names of the respective mortgagees, it seems better to omit these words within brackets.

strators, and assigns, henceforth during all the residue unexpired of the term of 500 years created by the hereinbefore-recited indenture of the —— day of ——, 18—, of and in the same manor, hereditaments, and premises, and for all other the estate, term, and interest, or estates, terms, and interests, of the said [*executor of first mortgagee*], and [A.] and [B.], therein (*m*). (*Covenant by executor of first mortgagee and* [A.] *and* [B.] *that they have not incumbered*). AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement, and in consideration of the sum of £1,500 of lawful money aforesaid to the said [*second mortgagee*] paid by the said [*transferree*], at or before the sealing and delivery of these presents, at the request and by the direction of the said Earl of [G.], testified as aforesaid, the receipt of which said sum of £1,500 he the said [*second mortgagee*] doth hereby acknowledge, and from the same doth release and discharge the said [*transferree*], his executors, administrators, and assigns, *He* the said [*second mortgagee*] *Hath* bargained, sold, assigned, and transferred, and by these presents *Doth* &c., unto the said [*transferree*], his executors, administrators, and assigns, *All that* principal sum of £1,500 so secured and made payable to the said [*second mortgagee*] in and by the hereinbefore-recited indenture of the —— day of ——, 18—, as aforesaid, and all interest due and to grow due for or in respect of the same, and the full benefit and advantage thereof; And all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said [*second mortgagee*] in, to, or upon the same, [together with all powers, remedies, and means whatsoever, requisite or necessary for suing for, recovering, receiving, and giving effectual releases and discharges for the lastly mentioned sum of £1,500 and interest]: To HAVE, RECEIVE, AND TAKE, the said sum of £1,500 and interest, and other the premises lastly hereby assigned unto and by the said [*transferree*] his executors, administrators, and assigns, henceforth as and for his and their own proper

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Further *testatum:*

Assignment of the second mortgage-money.

Habendum.

(*m*) Add, if the assignment is made subject to the existing equity of redemption—

"subject, nevertheless, to such equity of redemption, if any, as is now subsisting in the said premises under or by virtue of the proviso for redemption contained in the firstly hereinbefore-recited indenture of mortgage."

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goods and chattels, absolutely (*n*). AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement, and also in consideration of the sum of £5,000 of lawful money aforesaid, to the said [R.] and [S.], at or before the sealing and delivery of these presents, paid by the said [*transferree*], at the request and by the direction, as well of the said Lady Charlotte [M.], (signified as hereinafter mentioned), as of the said Henry Earl of [G.], and with the privity and approbation of the said Thomas Edward [M.], testified as aforesaid, the receipt and payment of which said sum of £5,000, they the said [R.] and [S.], do hereby respectively acknowledge, and therefrom *Do*, and each of them *Doth* release and discharge the said [*transferree*], his executors, administrators, and assigns, They the said [R.] and [S.], at the request and by the direction of the said Lady Charlotte [M.], (signified by this present deed or writing, by her the said Lady Charlotte [M.] signed, sealed, and delivered in the presence of and attested by the two credible persons whose names are intended to be hereon indorsed as witnesses to the execution hereof by her the said Lady Charlotte [M.]), and also they the said Thomas Edward [M.], and Lady Charlotte, his wife, at the request and by the direction of the said Henry Earl of [G.], testified as aforesaid, *Have*, and every of them *Hath* bargained, sold, assigned, and transferred, and by these presents *Do* &c., unto the said [*transferree*], his executors, administrators, and assigns, ALL THAT the hereinbefore mentioned bond or obligation, bearing date the —— day of ——, 18—, and the principal sum of £5,000 secured thereby, and all interest due, and henceforth to grow due thereon; And all the right, title, interest, property, profit, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of them the said [R.] and [S.],

Further *testatum*.

Assignment of third mortgage-money.

Remark on variation in the precedent.

(*n*) If the deed were prepared in the form suggested *ante*, p. 383, namely, by making each mortgagee assign to the transferree, or his trustee, the residue of his term, subject to the subsisting equity of redemption, such assignment by each respective mortgagee would immediately follow the *testatum* clause by which he assigns the debt; and accordingly the assignment of the lands by the second mortgagee would be introduced here. The transfer of the lands in each case will be the same as that by the first mortgagee, except that it will be made on the nomination of the transferree to a trustee for him, and of course the subsequent *testatum* clauses containing the assignments to the trustees in trust to attend the inheritance, will be omitted.

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Thomas Edward [M.], and Lady Charlotte, his wife, respectively, in, to, and upon the same respectively, [and all powers, remedies, and means whatsoever, requisite or necessary for the suing for, recovering, receiving, and giving effectual releases and discharges for the same principal sum of £5,000 and interest]: To HAVE, RECEIVE, AND TAKE the principal sum of £5,000, interest, and premises, expressed to be lastly hereby assigned unto and by the said [*transferree*], his executors, administrators, and assigns, henceforth for his and their own use and benefit absolutely; AND each of them the said [R.] and [S.], and Thomas Edward [M.], for himself, his heirs, executors, and administrators, and so far only as concerns his own acts and deeds, and as to the said Thomas Edward [M.], so far as concerns the acts and deeds of the said Lady Charlotte [M.], his wife, doth hereby covenant and declare with and to the said [*transferree*], his executors, administrators, and assigns, that they the said [R.] and [S.], Thomas Edward [M.], and Lady Charlotte [M.], his wife, respectively, have not at any time heretofore made, done, executed, or suffered any act, matter, or thing, whatsoever, by means whereof the bond or obligation, principal money, interest, and premises intended to be hereby assigned by them as aforesaid, or any part thereof, are or is released, avoided, assigned, or in anywise incumbered. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement, and also in consideration of the further sum of £2,000 of lawful money aforesaid, to him the said Henry Earl of [G.], at or before the sealing and delivery of these presents, paid by the said [*transferree*], the receipt of which said sum of £2,000 the said Henry Earl of [G.] doth hereby acknowledge, and therefrom doth release and discharge the said [*transferree*], his executors, administrators, and assigns, he the said Henry Earl of [G.], by virtue and in exercise and execution of the power and authority to him given by the hereinbefore in part recited act of Parliament, and of every other power and authority enabling him in this behalf, *Hath* subjected and charged, and by this present deed or writing, by him sealed and delivered in the presence of and attested by the two credible persons whose names are hereupon indorsed as witnesses to the execution of these presents by him the said Henry Earl of [G.], *Doth* subject and charge the aforesaid manor or lordship, or reputed manor or lordship of ——, with the rights, royalties, members,

Habendum.

Trustees covenant that they have not incumbered.

Further *testatum:*

Mortgagor, under the power in the act, charges the lands with the £2,000 now advanced and interest.

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and appurtenances, and all and singular other the hereditaments and premises hereinbefore mentioned, and intended to be hereby assigned as aforesaid, with their and every of their appurtenances, to and with the payment of the sum of £2,000 of lawful money of Great Britain and Ireland, over and above, and in addition to, the aforesaid sums of £1,500, £1,500, and £5,000, already charged thereupon, and intended to be hereby assigned as aforesaid, together with interest for the said sum of £2,000 from the day of the date of these presents, after the rate of £5 for every £100 by the year, [such sum of £2,000 and interest to be paid to the said [*transferree*], his executors, administrators, or assigns, upon or at the day or time hereinafter mentioned (*o*).]

Further *testatum:*

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said recited agreement, and also in consideration as well of the said sums of £1,500, £1,500, and £5,000, paid by the said [*transferree*] to the said [A.], [B.], [C.], and [D.], as of the said sum of £2,000 by the said [*transferree*] paid to the said Henry Earl of [G.] as aforesaid; and for more effectually securing the payment of the said several sums of £1,500, £1,500, £5,000, and £2,000, (making together the sum of £10,000), and the interest thereon respectively, and in consideration of 5*s.* to the said Henry Earl of [G.] and Frederick Earl of [D.] paid by the said [*transferree*] at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said Henry Earl of [G.], by virtue and in exercise and execution of the power reserved to him in and by the above in part recited act of Parliament, and of every other power and authority enabling him in this behalf, *Hath* granted, demised, ratified, and confirmed, and by this present deed or writing by him sealed and delivered, and intended to be attested as aforesaid, *Doth* grant, demise, ratify, and confirm, and the said Frederick Earl of [D.], at the request and by the direction of the said Henry Earl of [G.], (testified as aforesaid), *Hath* bargained, sold, assigned, and demised, and by these presents *Doth* &c., unto the said [*transferree*], his executors, administrators, and assigns, the said manor or lordship, or reputed manor or lordship of ——, and all and singular other the hereditaments and premises, with the appurtenances hereinbefore mentioned, and

Confirmation by mortgagor and his trustee of the first mortgage term.

(*o*) If no time is fixed by the proviso for redemption, as suggested *ante*, p. 338, these words should be omitted.

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intended to be hereby charged and assigned as aforesaid: To HAVE AND TO HOLD the said manor, or reputed manor, hereditaments, and premises, with the appurtenances, unto the said [*transferree*], his executors, administrators, and assigns, henceforth during all the residue now unexpired of the said term of 500 years, by the said indenture of the —— day of ——, 18—, limited or created of and in the same manor, hereditaments, and premises, subject, nevertheless (*p*), to the proviso or agreement hereinafter contained for the redemption of the same premises. (*Covenant by the Earl of* [D.] *that he has not incumbered, except as appears in and by these presents*): PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said [*transferree*] and Henry Earl of [G.], that in case the said Henry Earl of [G.], his heirs, executors, or administrators, or the person or persons for the time being entitled to redeem the premises intended to be hereby assigned as aforesaid, do and shall pay or cause to be paid unto the said [*transferree*], his executors, administrators, or assigns, [at or in the common dining-hall of Lincoln's-inn, in the county of Middlesex, upon the —— day of —— now next ensuing the date of these presents (*q*)], the sum of [£10,000, together with interest for the same after the rate of £5 for every £100 by the year, in satisfaction and discharge as well of the said several sums of £1,500, £1,500, and £5,000, to him the said [*transferree*] hereby assigned, or intended so to be, as aforesaid, and the interest thereon, as of the said sum of (*r*)] £2,000, so lent and advanced by the said [*transferree*] to the said Henry Earl of [G.] as aforesaid, and the interest thereon, without any defalcation or abatement for or in respect of any taxes or charges whatsoever, already imposed or to be imposed upon the premises, or upon the said principal sum and interest, or upon

Habendum.

Proviso for redemption.

(*p*) If the draft is prepared as suggested, *ante*, p. 383, add—

"as well to the equity of redemption now subsisting by virtue of the hereinbefore recited proviso for redemption contained in the said indenture, as also"

(*q*) For the reason suggested *ante*, p. 383, it is conceived that the words within these brackets ought to be omitted, in order to render the terms of the proviso for redemption consistent with the requisition of the act.

(*r*) If the present proviso is confined to the further advance, the several mortgages being assigned subject to the subsisting equities of redemption, the words within these brackets should be omitted.

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the said [*transferree*], his executors, administrators, or assigns, in respect thereof, by authority of Parliament or otherwise howsoever, Then, from and immediately after such payment so made (*s*) he the said [*transferree*], his executors, administrators, or assigns, shall and will, at the request, costs, and charges of the said Henry Earl of [G.], his heirs, executors, or administrators, or of the person or persons for the time being entitled to redeem the premises, assign or surrender the manor, hereditaments, and premises hereby assigned, or intended so to be, with their appurtenances, unto the person or persons entitled to the equity of redemption thereof, for the then residue of the said term of 500 years therein, freed and discharged of and from all incumbrances whatsoever, created by the said [*transferree*], his executors, administrators, or assigns: AND the said Henry Earl of [G.], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*transferree*], his executors or administrators, that he the said Henry Earl of [G.], his executors or administrators, shall and will pay, or cause to be paid, unto the said [*transferree*], his executors or administrators, on the —— day of —— next (*t*), the said sum of £10,000, and interest thereon

Covenant by mortgagor to pay mortgage-debt.

Variation as to cesser of term.

(*s*) Though the act expressly prescribes no particular mode of framing the proviso for redemption, but requires only that the term should be "made redeemable *or* be made to cease," and therefore it is conceived the proviso in the text is sufficient, yet, as reference is made to the cesser of the term, it seems advisable, in order to prevent all question, to declare in the proviso for redemption that the term shall cease. The subsequent part of the proviso in the text should then be omitted, and the following words substituted:—

"the said term of 500 years hereby assigned, limited, granted, or confirmed, of and concerning the said hereditaments so expressed or intended so to be, shall absolutely cease and determine, anything hereinbefore contained to the contrary notwithstanding."

As to covenant to pay mortgage debt.

(*t*) Though the proviso for redemption cannot, it is conceived, consistently with the act of Parliament, be confined to payment on a given day, yet there is no objection to framing the covenant in this manner. A covenant to pay, without any specification of time, would be a covenant to pay immediately. As there seems to be no necessary correspondence between the proviso for redemption and the covenant to pay, the form of the covenant here given need not be varied, even if the draft were prepared in the manner suggested *ante*, p. 383, *i. e.*, by assigning the lands subject to the subsisting equity of redemption under the old mortgages.

at the rate of £5 for every £100 by the year, from the day of the date of these presents, without any deduction or abatement whatsoever. (*Add usual mortgage covenants by Henry Earl of* [G.]). AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said sum of £1,500 so paid to the said [*second mortgagee*] as aforesaid, and of other the premises, *And also* in consideration of 5*s.* to the said [*second mortgagee*] paid by the said [*trustee of second mortgage term*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*second mortgagee*], at the request and by the direction of the said Henry Earl of [G.], and on the nomination of the said [*transferree*], testified as aforesaid, *Hath* bargained, sold, assigned, transferred, and set over, And by these presents *Doth* &c., unto the said [*trustee of second mortgage term*] (*u*), his executors, administrators, and assigns, the said manor or lordship, or reputed manor or lordship of ——, and all and singular other the hereditaments and premises hereinbefore mentioned, and intended to be hereby assigned, or such and so many and such part and parts thereof as are comprised in the term of 1,000 years, so created by the firstly hereinbefore-recited indenture of the —— day of ——, 18—, as aforesaid, with their and every of their rights, royalties, members, and appurtenances; And all the estate, &c.: To HAVE AND TO HOLD the said manor, or reputed manor, and all and singular other the hereditaments hereby lastly assigned, or intended so to be, with their and every of their appurtenances, unto the said [*trustee of second mortgage term*], his executors, administrators, and assigns, henceforth during all the residue now unexpired of the said term of 1,000 years therein, and for all other the estate, term, and interest (if any) of the said [*second mortgagee*] in the premises, upon the trusts hereinafter mentioned. (*Covenant by second mortgagee that he has not incumbered*). AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the sum of £5,000 so paid to the said [C.] and [D.] by the said [*transferree*] as aforesaid, and of other the premises, and in consideration of the sum of 5*s.* to the said [C.] and [D.] paid

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Further *testatum:*

Assignment of second mortgage term to a trustee.

Habendum in trust for transferree, and to attend the inheritance.

Further *testatum:*

(*u*) The second and third mortgage terms are vested in trustees, and not in the transferree himself, in order to prevent a merger of the two elder terms, which might let in intermediate incumbrances.

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by the said [*trustee of third mortgage term*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, they the said [C.] and [D.], at the request and by the direction, as well of the said Henry Earl of [G.], as of the said Thomas Edward [M.] and Lady Charlotte [M.], and on the nomination of the said [*transferree*], (testified as aforesaid), *Have*, and each of them *Hath* bargained, sold, assigned, and transferred, and by these presents *Do* &c.; And the said Thomas Edward [M.] and Lady Charlotte his wife *Have*, and each of them *Hath* remised, released, and quit-claimed, and by these presents *Do*, and each of them *Doth* &c., unto the said [*trustee of third mortgage term*], his executors, administrators, and assigns, ALL THAT the said manor or lordship, or reputed manor or lordship, of ——, and all and singular other the hereditaments and premises hereinbefore mentioned, and intended to be hereby assigned, or such and so many of them, and such part and parts thereof, as are comprised in the term of 2,000 years so created by the secondly in part recited indenture of the —— day of ——, 18—, as aforesaid, with their and every of their rights, royalties, members, and appurtenances; And all the estate, &c.: TO HAVE AND TO HOLD the said manor or reputed manor, hereditaments, and premises hereby lastly assigned, or expressed and intended so to be, unto the said [*trustee of third mortgage term*], his executors, administrators, and assigns, henceforth during all the residue now unexpired of the lastly-mentioned term of 2,000 years therein, and for all other the estate, term, and interest, or estates, terms, and interests (if any) of the said [C.], [D.], Thomas Edward [M.], and Lady Charlotte [M.], respectively, therein, upon the trusts hereinafter mentioned. (*Covenant by* [C.] *and* [D.] *that they have not incumbered*). AND it is hereby agreed and declared between and by the said parties hereto, that they the said [*trustee of second mortgage term*], and [*trustee of third mortgage term*], respectively, and their respective executors, administrators, and assigns, shall henceforth stand and be possessed of and interested in the several terms of 1,000 years and 2,000 years, to them respectively assigned as aforesaid, IN TRUST, in the first place, for the said [*transferree*], his executors, administrators, and assigns, for the better securing to him and them payment of the said sum of £10,000 and interest; And from and after full payment and satisfaction thereof,

Assignment of third mortgage term to a trustee.

Habendum in trust for transferree and to attend the inheritance.

Trusts of the second and third mortgage terms.

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IN TRUST to attend, wait upon, and go along with the reversion, freehold, and inheritance of the premises intended to be hereby assigned as aforesaid, and to protect and defend the same from all mesne charges and incumbrances, if any such there be (*x*): AND LASTLY, the said Henry Earl of

Mortgagor.

(*x*) The draft from which the precedent in the text has been taken, contained in this place some clauses which have been omitted, because they appeared to be objectionable. The mortgaged estate was subject, with other lands, to a rent-charge, the grantee of which covenanted with the transferree not to distrain on the lands assigned in mortgage to him. Now, such a covenant the owner of a rent-charge ought not to enter into, for, in the opinion of some gentlemen, it would operate as a release of the lands to which it relates, on the same principle that a covenant not to sue for a debt generally (as distinguished from a covenant not to sue for a definite time) is a release of such debt; *vide post*, Vol. 8, p. 467, 1st ed.; and therefore, according to the well-known doctrine, that rent-charges cannot be apportioned, (Co. Litt. 147. b.), such a covenant would extinguish the rent as to the whole of the lands out of which it issues. *Vide post*, Vol. 8, p. 419, 1st ed. All that the grantee of the rent in such a case ought to do is to enter into a covenant to make good losses occasioned by any distresses which he might levy, (according to the variations introduced into a precedent *post*, Vol. 8, p. 504, 1st ed.), or an agreement *under hand alone* not to distrain, (agreeably to the clause in the sequel), and which might be indorsed on the deed creating the rent. This of course would not release the lands, nor prevent the levying of a distress; but, if supported by a sufficient consideration, it would give a right of action against the contracting party on breach of the stipulation.

Effect of an agreement by owner of rent-charge not to distrain.

The following form of such an agreement (to be contained in a separate instrument, *not under seal*), has been framed in as close adherence to the terms of the covenant expunged from the precedent in the text as was practicable, and, it will be seen, supposes the agreement to have been prefaced by proper explanatory recitals, shewing the consideration, &c.

"He the said [*rent owner*], in consideration of the premises, doth hereby for himself, his heirs, executors, administrators, and assigns, contract and agree with the said [*transferree*], his executors, administrators, and assigns, that he the said [*rent owner*], his executors, administrators, or assigns, will not nor shall at any time hereafter, in case of non-payment of the said annual sum of £——or any part thereof, distrain or enter, or cause or procure any distress or entry to be made on the said manor, or any other of the hereditaments and premises hereinbefore mentioned; nor bring, commence, carry on, or prosecute any action, suit, or other proceeding against the tenants or occupiers of the same manor and

Agreement by owner of rent-charge not to distrain.

15. BY THREE MORTGAGEES, AND FURTHER CHARGE BY MORTGAGOR, UNDER A POWER.

covenants to pay the interest regularly.

[G.] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree, as well with the said [*transferree*], his executors, administrators, and assigns, as also with the person or persons for the time being entitled to the freehold and inheritance of the manor, hereditaments, and premises intended to be hereby charged and assigned as aforesaid, in remainder expectant upon the decease of the said Henry Earl of [G.], that he the said Henry Earl of [G.], or his assigns, will and shall, during so long of his natural life as the aggregate principal sum of £10,000 intended to be secured upon the aforesaid manor, hereditaments, and premises as aforesaid, or any part thereof, shall remain owing upon or by virtue of such security, duly and punctually pay and keep down the interest on the same by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, the first half-yearly payment thereof to be made on the —— day of —— now next ensuing, without any deduction or abatement whatsoever. IN WITNESS &c.

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other hereditaments, or any of them, or against any person or persons, who is, or are, or shall become the owner or owners, occupier or occupiers, or tenant or tenants of the same manor and other hereditaments, or any part thereof, for recovering, obtaining, or compelling payment of the said annual sum of £——, or any part thereof, or the rents and profits of the said manor and other hereditaments, or any part thereof, nor in anywise molest, interrupt, or disturb the said [*transferree*], his executors, administrators, or assigns, in the possession and enjoyment of the said manor and other hereditaments, or any of them, or any part thereof, or in the perception of the rents and profits thereof."

16. [A.] *being possessed of a* DEPOSIT SECURITY *on a* LEASE, *with a* LETTER *of* ATTORNEY *to* RECEIVE *the Rents in discharge of a Debt, transfers this Deposit Security to a Creditor of his own, and by the present Deed* APPOINTS *such Creditor his* SUBSTITUTE *under a* POWER *of Substitution in the* LETTER *of* ATTORNEY (*a*). 16. DEPOSIT SECURITY, AND LETTER OF ATTORNEY.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*transferror*], of &c., of the one part; and [*transferree*], of &c., of the other part: WHEREAS, by a certain deed-poll or letter of attorney, bearing date on or about the —— day of ——, under the hand and seal of [*debtor*], of &c., *reciting* that the said [*debtor*] was then indebted unto the said [*transferror*] in the sum of £——; and that for the purpose of securing the same with interest, the said [*debtor*] had, immediately before the execution thereof, deposited in the hands of the said [*transferror*], a certain indenture of lease, bearing date the —— day of ——, and made between [*lessor*], of &c., of the one part, and the said [*transferror*], of the other part; whereby a messuage or tenement, being No. —, in —— street, in the city of ——, had been demised to the said [*debtor*], his executors or administrators, for the term of —— years from the

Parties.

Recital of letter of attorney.

(*a*) The precedent in the text exemplifies the transfer of a security upon leaseholds in the occupation (by the license of the original lessor) of under-tenants, made by means of a deposit and letter of attorney; being the only security which can safely be created in property held by lease, which contains a restriction against assigning and underleasing. [As to the deposit of the lease, *vide ante*, Vol. 5, p. 129.] That part of it which relates to the appointment of the transferree as a substitute under the power, will serve as a useful guide in assigning a mortgage security that consists of a *chose en action*, which the transferror is, by the usual power, authorized to receive and recover, with a power of substitution. If the mortgagor is not a party, the transferree should be appointed the transferror's substitute under this power. If he is a party, then the better plan is, for the mortgagor to revoke the former power, (which revocation, indeed, the new appointment would impliedly effect), and with the consent of the transferror appoint the transferree his attorney for the purpose.

Remarks upon the precedent in the text.

16. DEPOSIT SECURITY, AND LETTER OF ATTORNEY.

date thereof, at the yearly rent of £——, subject to certain covenants therein contained, including a covenant not to assign, demise, or underlet the said premises without the consent in writing of the said [*lessor*], his heirs or assigns; and also reciting, that it had been agreed, that, for the purpose of further securing the said debt and interest, the said [*debtor*] should execute to the said [*transferror*] the letter of attorney thereinafter contained; *It is* then *witnessed*, that, for the considerations aforesaid, the said [*debtor*] did absolutely and irrevocably make, constitute, and appoint the said [*transferror*], his executors or administrators, to be the true and lawful receiver and receivers, attorney and attorneys of the said [*debtor*], his executors or administrators, for him or them, and in his or their name or names, or otherwise, to ask for and demand from the tenants and occupiers of the said messuage or tenement, and all other persons whom it might concern, the rents and profits then due and thereafter to become due for or in respect of the said premises; and on non-payment thereof to adopt and pursue such remedies and means, by distress, entry, and otherwise, for the recovery thereof, as might be deemed expedient; and when the same should be received, to give effectual discharges for the same, exonerating the persons paying the same from seeing to the application thereof; and to do and execute all such other acts, matters, and things as might be requisite in the premises; and to appoint, from time to time, a substitute or substitutes for all or any of the purposes aforesaid; the said [*debtor*] thereby ratifying and confirming, and agreeing to ratify and confirm, whatsoever his said attorney or attorneys, or his or their substitute or substitutes, should lawfully do, or cause to be done, in or about the premises; And the said [*debtor*] did thereby empower the said [*transferror*], his executors, or administrators, or his or their substitute or substitutes, out of the rents and profits from time to time to be received under the powers or authorities thereinbefore contained, in the first place to reimburse himself and themselves all expenses incurred in the execution of the said powers or authorities, and in the next place to retain and satisfy unto him the said [*transferror*], his executors or administrators, the said debt or sum of £——, then owing to him the said [*transferror*] as aforesaid, and interest from the day of the date thereof, at the rate of £5 per centum per annum on the said sum,

Recital of authority to transferror to receive rents,

and to apply same in payment of debt intended to be secured, &c.

or so much thereof as should from time to time remain unpaid: And to pay over any residue or surplus which might remain in the hands of the said [*transferror*], his executors or administrators, or his or their substitute or substitutes, unapplied to the purposes aforesaid, unto the said [*debtor*], his executors, administrators, or assigns, And the said [*debtor*] covenanted with the said [*transferror*] not to revoke the power or authority therein contained, until the whole of the said principal sum of £——, owing to the said [*transferror*], and interest thereon as aforesaid, should have been fully satisfied and discharged: AND WHEREAS the said [*transferror*] hath not yet received any sum or sums of money, by virtue of the hereinbefore-recited letter of attorney, but the whole of the said principal sum and interest intended to be secured thereby remains owing to him the said [*transferror*], as he doth hereby declare: AND WHEREAS the said [*transferror*] is indebted to the said [*transferree*] in the sum of £——, and it hath been agreed, that, for the purpose of securing the same, (but without interest), the said [*transferror*] should transfer to him the benefit of his said security for the debt owing to him from the said [*debtor*]: AND WHEREAS, in pursuance of the said agreement, the said [*transferror*] hath this day delivered to the said [*transferree*] the said lease so deposited with him as aforesaid, to be retained by the said [*transferree*] until the said sum of £—— owing to him from the said [*transferror*] shall be wholly paid and discharged (*b*). NOW THIS INDENTURE WITNESSETH, that, for the consideration aforesaid, the said [*transferror*], in pursuance and execution of the power or authority in this behalf contained in the hereinbefore-recited letter of attorney, *Doth*, by these presents, absolutely and irrevocably make, constitute, and appoint the said [*transferree*], his executors or administrators, to be the true and lawful substitute and substitutes (*c*) of the said [*transferror*], his

16. DEPOSIT SECURITY, AND LETTER OF ATTORNEY.

That no money has been received under the power.

That transferror is indebted to transferree.

Testatum.

Debtor appoints creditor his substitute under the power.

(*b*) The sub-debt, it will be seen, is assumed to be less than the original debt. No formal transfer of the lien or deposit security is requisite. It passes by delivery of the deposited instrument. The deposit is noticed for the mere purpose of shewing the identity of the debt.

(*c*) If this power extends to appointing the transferree the transferror's attorney for the purpose of bringing actions on the covenants in the original deed, add clauses *ut ante*, p. 266.

16. DEPOSIT SECURITY, AND LETTER OF ATTORNEY.

executors or administrators, for him or them, and in his or their name or names, or in the name or names of the said [*original debtor*], his executors or administrators, to execute and exercise all and every or any of the powers and authorities expressed and contained in the hereinbefore-recited deed-poll or letter of attorney, in as full, ample, and effectual a manner, to all intents and purposes, as he the said [*transferror*] could have executed and exercised the same if these presents had not been made; and generally to do and execute all such acts, matters, and things as may be requisite in the premises, and to appoint from time to time a substitute or substitutes (*d*) for all or any of the purposes aforesaid; the said [*transferror*], so far as he lawfully can, hereby ratifying and confirming, and agreeing to ratify and confirm, whatsoever the said [*transferree*], his executors, or administrators, or his substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises. AND it is hereby declared, that the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, shall stand possessed of and shall apply the moneys which from time to time shall come to his or their hands by virtue of these presents, in manner following, (that is to say), in the first place, in retaining and paying all costs and expenses incident to or attending the execution of the powers or authorities herein contained; and, in the next place, in retaining and satisfying to him the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, the said sum of £—— (*e*) so

Moneys, how to be applied.

Power of substitution.

(*d*) The power of substitution in the original deed would, it is conceived, authorize the insertion of a similar power of appointing substitutes in the deed exercising that power, and so *toties quoties*, as the lastly appointed substitute in the series is only the attorney of the original creditor.

As to stamp.

(*e*) [The original security in this case, it is conceived, comes within the description in the stamp act of "an agreement, contract, or bond, accompanied with a deposit of title-deeds for making a mortgage, wadset, or any such other security or conveyance as aforesaid, of any lands, estate, or property, comprised in such title-deeds, or for pledging or charging the same as a security." The rents which the attorney is authorized to receive must be considered as "property" within the meaning of the act. If so, the present deed would also, it is presumed, require an *ad valorem* mortgage-stamp (being in the nature of a sub-mortgage of the same property) in respect of the sum sought to be secured by it.]

owing to him as aforesaid; and, after satisfaction thereof, do and shall immediately pay over the residue or surplus of the said moneys unto the said [*transferror*], his executors, administrators, or assigns; And the said [*transferror*] doth hereby declare, that every person paying any sum or sums of money to the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, by virtue of these presents, shall be discharged from all responsibility in respect of the application thereof, and shall not be obliged to inquire whether the receipt thereof is consistent with the powers and authorities herein contained; and the fact of the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, having the custody of these presents, shall be deemed to be conclusive evidence that the power or authority hereby given to him or them has not expired or been revoked. AND the said [*transferror*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*transferree*], his executors, administrators, and assigns, that the said principal sum of £——, and interest thereon as aforesaid, are now due and owing to the said [*transferror*], as hereinbefore recited, and that the hereinbefore-recited letter of attorney, to the knowledge or belief of the said [*transferror*], hath not been revoked, nor become in any manner void or voidable; *And also* that the said [*transferror*], his executors or administrators, will not at any time or times hereafter receive the rents and profits which by these presents the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, is or are authorized to receive as aforesaid, or any part thereof respectively, nor revoke or make void the power or authority hereinbefore given to the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, nor in any manner interfere with the execution thereof, without his or their consent in writing for that purpose first obtained, until the debt hereby intended to be secured has been fully discharged; *And further*, that the said [*transferror*], his executors or administrators, will, from time to time, and at all times hereafter, so long as any part of the sum of money hereby intended to be secured shall remain unpaid, at his or their own costs, upon every request of the said [*transferree*], his executors or administrators, or his or their substitute or substitutes, make, do, and execute

16. DEPOSIT SECURITY, AND LETTER OF ATTORNEY.

Covenant by transferror that principal and interest are due.

—not to receive rents or revoke power;

—and for further assurance.

16. DEPOSIT SECURITY, AND LETTER OF ATTORNEY.

every such further lawful act or deed in the law whatsoever, for more effectually enabling him or them to exercise the several powers and authorities expressed and contained in the hereinbefore-recited letter of attorney, according to the true intent and meaning of these presents, as by the said [*transferree*], his executors, or administrators, or his or their substitute or substitutes, shall be reasonably advised and required. IN WITNESS &c.

RECONVEYANCES OF MORTGAGES.

PRELIMINARY REMARKS.

1. *The Statutes providing for the Payment of Debts out of Real Estate* (*a*), 411.
2. *The Statutes relating to the Escheat and Forfeiture of Trust Estates, and to the Conveyance and Transfer of Property vested in Trustees under Disabilities, &c.* 420.
3. *Presumption of the Reconveyance or Surrender of satisfied Trust Estates*, 444.

1. THE STATUTES PROVIDING FOR THE PAYMENT OF DEBTS OUT OF REAL ESTATE.

PAYMENT OF DEBTS OUT OF REAL ESTATE.

THE act of the 11 Geo. 4 & 1 Will. 4, c. 47, among other salutary alterations, has rendered devisees of real, or rather of freehold estates, in fee, liable to actions of *covenant*, who were before liable to actions of *debt* only. See *Fairley* v. *Briant*, 5 Nev. & M. 42; 3 Ad. & El. 839.

Devisees of freeholds liable to actions of covenant.

After reciting and repealing the statutes 3 & 4 Wm. & Mary, c. 14; 6 & 7 Wm. & Mary, c. 14; 4 Ann. c. 5; and 47 Geo. 3, c. 74; the act proceeds as follows:—Sect. 2. "AND WHEREAS it is not reasonable or just, that, by the practice or contrivance of any debtors, their creditors should be defrauded of their just debts; and, nevertheless, it hath often so happened, that, where several persons having by bonds, covenants, or other specialties, bound themselves and their heirs, and have afterwards died seised in fee-simple of and in manors, messuages, lands, tenements, and hereditaments, or had power or authority to dispose of or charge the same by their wills or testa-

Statute 11 Geo. 4 & 1 Will. 4, c. 47.
For remedying frauds committed on creditors by wills.

(*a*) [The provisions of these statutes are so closely connected in many particulars with those which follow, that it seems advisable to place them together in this place, although many of the matters to which they relate are foreign to the subject of reconveyance of mortgages.]

PAYMENT OF DEBTS OUT OF REAL ESTATE.

ments have, to the defrauding of such their creditors, by their last wills or testaments, devised the same or disposed thereof in such manner as such creditors have lost their said debts; for remedying of which, and for the maintenance of just and upright dealing, be it therefore further enacted, That all wills and testamentary limitations, dispositions, or appointments, already made by persons now in being, or hereafter to be made by any person or persons whomsoever, of or concerning any manors, messuages, lands, tenements, or hereditaments, or any rent, profit, term, or charge out of the same, whereof any person or persons, at the time of his, her, or their decease, shall be seised in fee-simple, in possession, reversion, or remainder, or have power to dispose of the same by his, her, or their last wills or testaments, shall be deemed or taken (only as against such person or persons, bodies politic or corporate, and his and their heirs, successors, executors, administrators, and assigns, and every of them, with whom the person or persons making any such wills, or testaments, limitations, dispositions, or appointments, shall have entered into any bond, covenant, or other specialty, binding his, her, or their heirs), to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of none effect, any pretence, colour, feigned or presumed consideration, or any other matter or thing to the contrary notwithstanding."

Wills devising lands void against specialty creditors.

Sect. 3. "And, for the means that such creditors may be enabled to recover upon such bonds, covenants, and other specialties, be it further enacted, That, in the cases before mentioned, every such creditor shall and may have and maintain his, her, and their action and actions of debt *or covenant* upon the said bonds, covenants, and specialties against the heir and heirs-at-law of such obligor or obligors, covenantor or covenantors, and such devisee and devisees, or the devisee or devisees of such first-mentioned devisee or devisees jointly, by virtue of this act; and such devisee and devisees shall be liable and chargeable for a false plea by him or them pleaded, in the same manner as any heir should have been for any false plea by him pleaded, or for not confessing the lands or tenements to him descended."

Enabling creditors to recover upon bonds. Creditors may maintain actions of debt and covenant against heirs and devisees.

Sect. 4. "And be it further enacted, That, if in any case there shall not be any heir-at-law against whom, jointly with the devisee or devisees, a remedy is hereby given, in every such case every creditor to whom by this act relief is so given shall and may have and maintain his, her, and their action and actions of debt or covenant, as the case may be, against such devisee or devisees

If there is no heir-at-law, actions may be maintained against the devisee.

solely; and such devisee or devisees shall be liable for false plea as aforesaid."

PAYMENT OF DEBTS OUT OF REAL ESTATE.

Not to affect any limitation for payment of debts or portions for children.

Sect. 5. "Provided always, and be it further enacted, That, where there hath been or shall be any limitation or appointment, devise or disposition, of or concerning any manors, messuages, lands, tenements, or hereditaments, for the raising or payment of any real and just debt or debts, or any portion or portions, sum or sums of money, for any child or children of any person, according to or in pursuance of any marriage contract or agreement in writing, *bonâ fide* made before such marriage, the same and every of them shall be in full force; and the same manors, messuages, lands, tenements, and hereditaments shall and may be holden and enjoyed by every such person or persons, his, her, and their heirs, executors, administrators, and assigns, for whom the said limitation, appointment, devise, or disposition was made, and by his, her, and their trustee or trustees, his, her, and their heirs, executors, administrators, and assigns, for such estate or interest as shall be so limited or appointed, devised or disposed, until such debt or debts, portion or portions, shall be raised, paid, and satisfied, anything in this act contained to the contrary notwithstanding."

Heir-at-law to be answerable for debts, although he may sell estate before action brought.

Sect. 6. "And be it further enacted, That, in all cases where any heir-at-law shall be liable to pay the debts, or perform the covenants of his ancestors, in regard of any lands, tenements, or hereditaments descended to him, and shall sell, alien, or make over the same before any action brought or process sued out against him, such heir-at-law shall be answerable for such debt or debts, or covenants, in an action or actions of debt or covenant to the value of the said lands so by him sold, aliened, or made over, in which cases all creditors shall be preferred as in actions against executors and administrators; and such execution shall be taken out upon any judgment or judgments so obtained against such heir, to the value of the said land, as if the same were his own proper debt or debts; saving that the lands, tenements, and hereditaments, *bonâ fide* aliened before the action brought, shall not be liable to such execution."

But purchaser not to be affected.

Where an action of debt is brought against the heir, he may plead *riens per descent*.

Sect. 7. "Provided always, and be it further enacted, That, where any action of debt or covenant upon any specialty is brought against the heir, he may plead *riens per descent* at the time of the original writ brought or the bill filed against him, anything herein contained to the contrary notwithstanding; and the plaintiff in such action may reply that he had lands, tenements, or hereditaments from his ancestor before the original writ brought or bill

PAYMENT OF DEBTS OUT OF REAL ESTATE.

filed; and if, upon the issue joined thereupon, it be found for the plaintiff, the jury shall inquire of the value of the lands, tenements, or hereditaments so descended, and thereupon judgment shall be given and execution shall be awarded as aforesaid; but, if judgment be given against such heir by confession of the action, without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damage, without any writ to inquire of the lands, tenements, or hereditaments so descended."

Devisees to be liable the same as heirs-at-law.

Sect. 8. "Provided always, and be it further enacted, That all and every the devisee and devisees made liable by this act shall be liable and chargeable in the same manner as the heir-at-law by force of this act, notwithstanding the lands, tenements, and hereditaments to him or them devised shall be aliened before the action brought."

Trader's estates shall be assets to be administered in courts of equity.

Sect. 9. "And be it further enacted, That, from and after the passing of this act, where any person, being at the time of his death a trader within the true intent and meaning of the laws relating to bankrupts, shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, or other real estate, which he shall not by his last will have charged with or devised subject to or for the payment of his debts (*b*), and which would be assets for the payment of his debt due on any specialty in which the heirs were bound, the same shall be assets to be administered in courts of equity for the payment of all the just debts of such person, as well debts due on simple contract as on specialty; and that the heir or heirs-at-law, devisee or devisees, of such debtor, *and the devisee or devisees of such first-mentioned devisee or devisees* (*c*), shall be liable to all the same suits in equity, at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as they are liable to at the suit of creditors by specialty, in which the heirs were bound: Provided always, that, in the administration of assets by courts of equity, under and by virtue of this provision, all creditors by specialty, in which the heirs are bound, shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty, in which the heirs are not bound, shall be paid any part of their demands."

Creditors by specialty to be paid first.

(*b*) [The statutory charge does not exempt purchasers from seeing to the satisfaction of specific charges on the estate. (*Horn* v. *Horn*, 2 Sim. & St. 448). See, on the effect of this enactment, *ante*, Vol. 5, pp. 142 and 364.]

(*c*) These words are added in the present act. In other respects the section corresponds almost *verbatim*, with the stat. 47 Geo. 3, c. 74, sess. 2.

PAYMENT OF DEBTS OUT OF REAL ESTATE.

Parol shall not demur in proceedings by or against infants.

Sect. 10. "And be it further enacted (*d*), That, from and after the passing of this act, where any action, suit, or other proceeding for the payment of debts, *or any other purpose*, shall be commenced or prosecuted by or against any infant under the age of twenty-one years, either alone or together with any other person or persons, the parol shall not demur, but such action, suit, or other proceeding, shall be prosecuted and carried on in the same manner and as effectually as any action or suit could before the passing of this act be carried on or prosecuted by or against any infant, where, according to law, the parol did not demur."

Infants to make conveyances, under order of the court, of lands decreed to be sold to pay debts.

Sect. 11. "And be it further enacted, That where any suit hath been, or shall be, instituted in any court of equity for the payment of any debts (*e*) of any person or persons deceased, to which their heir or heirs, devisee or devisees (*f*), may be subject or liable, and such court of equity shall decree the estates liable to such debts, or any of them, to be sold for satisfaction of such debt or debts, and by reason of the infancy of any such heir or heirs, devisee or devisees, an immediate conveyance thereof cannot, as the law at present stands, be compelled, in every such case such court shall direct, and, if necessary, compel such infant or infants to convey such estates so to be sold (by all proper assurances in the law (*g*)) to the purchaser or purchasers thereof, and in manner as the said court shall think proper and direct; and every such infant shall make such conveyance accordingly; and every such conveyance shall be as valid and effectual, to all intents and purposes, as if such person or persons, being an infant or infants, was or were, at the time of executing the same, of the full age of twenty-one years (*h*)."

Persons having * *Sic.*

Sect. 12. "And be it further enacted, That where any lands, tenements, or hereditaments, hath * been, or shall be devised in

(*d*) Sections 10, 11, & 12, are entirely new. As to the parol demurring, see *Lechmere* v. *Brasier*, 2 J. & W. 287; and cas. cit. Id. 290, n. [The giving six months to an infant defendant, after attaining his majority, was founded on the demurrer of the parol; and that being abolished, an infant is no longer entitled to the six months. *Powys* v. *Mansfield*, 6 Sim. 639. See *Kelsall* v. *Kelsall*, 2 Myl. & K. 415: *Price* v. *Carver*, 3 Myl. & Cr. 157.]

(*e*) [A suit by an equitable mortgagee, to compel payment of his mortgage debt, is a suit within this clause, and on a sale under it, the court will direct the infant heir of the mortgagor to convey. *Scolefield* v. *Heafield*, 8 Sim. 470.]

(*f*) See *Brooke* v. *Smith*, *infra*, p. 419.

(*g*) [This section extends to an infant tenant in tail. *Radcliffe* v. *Eccles*, 1 Kee. 130: *Penny* v. *Pretor*, 9 Sim. 135.]

(*h*) The application under this section must be by petition, and not by motion. *Anonymous*, 1 You. & Col. 75.]

PAYMENT OF DEBTS OUT OF REAL ESTATE.

settlement by any person or persons whose estate under this act, or by law, or by his or their will or wills, shall be liable to the payment of any of his or their debts, and by such devise shall be vested in any person or persons for life or other limited interest, with any remainder, limitation, or gift over, which may not be vested, *or may be vested in some person or persons from whom a conveyance or other assurance of the same cannot be obtained*, or by way of executory devise, and a decree shall be made for the sale thereof for the payment of such debts or any of them, it shall be lawful for the Court by whom such decree shall be made, to direct any such tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee-simple, or other the whole interest or interests so to be sold, to the purchaser or purchasers, or in such manner as the said Court shall think proper; and every such conveyance, release, surrender, assignment, or other assurance shall be as effectual as if the person who shall make and execute the same were seised or possessed of the fee-simple, or other whole estate so to be sold."

a limited interest, may convey the fee in certain cases.

Not to repeal act 33 Geo. 2 (I.) relating to debts due to bankers.

Sect. 13. "And be it further enacted, That nothing in this act shall extend, or be deemed or construed to extend, to repeal or alter an act made by the parliament of Ireland in the thirty-third year of the reign of (*i*) King George the First, intituled, 'An Act for the better securing the payment of bankers' notes, and for providing a more effectual remedy for the security and payment of the debts due by bankers.'"

Stat. 2 & 3 Vict. c. 60.

[By the stat. 2 & 3 Vict. c. 60, after reciting the 11th and 12th sections of the 11 Geo. 4 & 1 Will 4, c. 47, it is enacted,

Recited provisions of 11 Geo. 4 & 1 Will. 4, c. 47, extended to authorize mortgages as well as sales of estates.

Sect. 1. "That the said hereinbefore-recited provisions of the said act shall extend and the same are hereby extended to authorize Courts of Equity to direct mortgages (*k*) as well as sales to be made of the estates of such infant heirs or devisees, and also of lands, tenements, or hereditaments, so devised in settlement as aforesaid, and to authorize such sales and mortgages to be made in cases where such tenant for life, or other person having a limited interest, or such first executory devisee as aforesaid, is an infant."

Surplus of mo-

Sect. 2. "That when any sale or mortgage shall be made in pur-

(*i*) [The words, "King George the Second, intituled, 'An Act for repealing an act passed in this kingdom in the 8th year of the reign of,'" are omitted.]

(*k*) [It was held in *Smethurst* v. *Longworth*, 2 Kee. 604, that the 11 Geo. 4 & 1 Will. 4, c. 47, did not authorize the court to direct a mortgage. But the Vice-Chancellor, subsequently (but before *Smethurst* v. *Longworth* was reported) held, that a mortgage, being a conditional sale, was within the act. *Holme* v. *Williams*, 8 Sim. 557.]

suance of the said recited Act or this Act, the surplus (if any) of the money raised by such sale or mortgage, which shall remain after answering the purposes for which the same shall have been raised, and defraying all reasonable costs and expenses, shall be considered, in all respects, of the same nature, and descend or devolve in the same manner as the estate, or the lands, tenements, or hereditaments so sold or mortgaged; and shall belong to the same persons, be subject to the same limitations and provisions, and be applicable to the same purposes as such estate or such lands, tenements, or hereditaments would have belonged and been subject and applicable to, in case no such sale or mortgage had been made."

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ney arising from such sale or mortgage to descend in the same manner as the estates so sold or mortgaged would have done.

[The stat. 3 & 4 Will. 4, c. 104, enacts—

"That, from and after the passing of this Act, when any person shall die seised of or entitled to any estates or interest in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate, whether freehold, customaryhold, or copyhold, which he shall not by his last will have charged with, or devised subject to the payment of his debts, the same shall be assets to be administered in Courts of Equity for the payment of the just debts of such persons, as well debts due on simple contract as on specialty (*l*); and that the heir or heirs-at-law, customary heir or heirs, devisee or devisees of such debtor shall be liable to all the same suits in Equity, at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as the heir or heirs-at-law, devisee or devisees of any person or persons who died seised of freehold estates, was or were, before the passing of this Act, liable to in respect of such freehold estates, at the suit of creditors by specialty in which the heirs were bound: Provided always, that in the administration of assets by Courts of Equity, under and by virtue of this Act, all creditors by specialty, in which the heirs are bound, shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty in which the heirs are not bound, shall be paid any part of their demands."]

Stat. 3 & 4 Will. 4, c. 104. Royal assent, 29th Aug. 1833.

Freehold and copyhold estates in all cases to be assets for the payment of simple contract or specialty debts.

The object of the statute 11 Geo. 4 & 1 Will. 4, c. 47, was twofold; namely, the consolidation of the provisions of former statutes,

Remarks upon stat. 11 Geo. 4 & 1 Will. 4, c. 47.

(*l*) [The expenses of the funeral of the deceased are not his debts, and therefore are not charged on his real assets by this act. Nor are advances made towards his support during lunacy. *Carter* v. *Read*, 10 Sim. 7. The personal estate of a deceased is liable for his *reasonable* funeral expenses only. *Green* v. *Salmon*, 3 Nev. & P. 388.]

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and the enlargement of those provisions. It re-enacts the stat. 3 & 4 William & Mary, which rendered devises void against creditors by specialty binding the heirs, (who, let it be remembered, are not bound even by contracts under seal unless named), and it extends the liability of devisees to actions of *covenant* as well as actions of *debt*. The present statute also embodies the provisions of the stat. 47 Geo. 3, c. 74, s. 2, making the freehold (including lands held *pour autre vie*) lands of persons dying traders liable to their simple contract debts, [in the hands of their heirs or devisees; a provision which is extended by the stat. 3 & 4 Will. 4, c. 104, stated *supra*, to debtors who are not traders.] An important supplementary enactment of the statute is, that it enables Courts of Equity, on decreeing a sale of lands for the payment of debts, to give a good title to the legal estate in fee in two instances, in which, before, they had no power to do so: first, where such fee has become by descent from, or by the will of, the debtor, vested in an infant, not being a mere trustee; secondly, where the estate has been so devised by the debtor, as that the entire fee-simple is not vested in *any* person, as by limitations in strict settlement, or subject to future or executory interests in favour of unborn persons. In these cases, though the Court, by its decree, could, before the statute, have made a good *equitable* title, it could not clothe that title with the legal estate. It is not quite clear, whether the statute extends to enable a person taking a limited or defeasible interest *by other means than by devise*, to alien the fee. The question would arise under a devise to the first son of A., who has no son, in which case the immediate fee would descend to the heir, subject to the executory devise to the first son of A.; and if the statute was confined to devisees, of course the heir could not, by the direction of the Court, make a title to the absolute inheritance. It is highly probable, however, that the words in italics in the 12th section would be held to include all cases in which the lands had become so parcelled out in interest, *by will or otherwise*, as that no person *in esse* had power to convey an absolute estate in fee-simple; and this conclusion is much strengthened by a decision which has been made upon the statute, and in which the previous section received a construction extending it to a case which was clearly not within the words, but was considered to be within the spirit and meaning of the statute.

It will be observed, that the clause in question (*i. e.* the 11th section) expressly provides only for the event of the debtor himself dying, leaving an infant heir or devisee, and not for that of the estate devolving to an infant heir or devisee of such heir or devisee,

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which, of course, may happen where the heir or devisee of the debtor dies before a conveyance has been obtained from him. The Editor's attention has been directed to this point by a case which occurred in practice, and was afterwards brought before the Court. A testator, who was a trader, and had moreover charged his estate with the payment of his debts, devised the estate so charged to A., B., & C., as tenants in common in fee. A. died shortly after the testator, intestate, leaving an infant heir. A creditor's suit was instituted, and a sale decreed. Sir *J. Leach*, M. R., on an application subsequent to the decree, for an order under this statute for the infant to convey the one-third vested in her, granted the order, observing, that, though the case was not within the express terms, it was within the equity of the act. *Brooke* v. *Smith*, Rolls, 24th November, 1830, MS. [Now reported, 2 Russ. & Myl. 73.]

Decision upon stat. 1 Will. 4, c. 47.

Brooke v. *Smith.*

It is apprehended, notwithstanding the difference in the terms employed in the 11th & 12th sections, in describing the cases to which those sections respectively apply, that the former would extend to all the cases embraced in the latter; or, in other words, that a devisee "liable" to debts, within the 11th section, would be held to mean a devisee liable by *any of the means* pointed out in the 12th section, and not merely a devisee who was liable by law, as distinguished from one who was liable under an express charge. The argument for the negative construction, namely, that the case of a testamentary charge is expressly referred to in the 12th but not in the 11th section, might have had some weight, if the 11th section specified *any* mode of liability, but it does not; the terms are quite general; though less specific, it is not less comprehensive than the following section; the two clauses, therefore, clearly might, and, it is conceived, would be construed to be co-extensive. The necessity for resorting to the powers given to the Court by both sections, would arise under a devise of lands charged with debts to a person, *who is an infant*, for life, with remainders in strict settlement; but it seems to have been thought doubtful whether the act applied to such a case, as provision is made for it in the recent statute of 2 & 3 Vict. c. 60. Perhaps, in order to avoid all such questions, it would have been better if the legislature had enacted generally, that, whenever the Court of Chancery decreed a sale, it should be empowered to make a good *legal* and equitable title. The utmost experience and ability (and when have these been more conspicuously combined than in the author of this statute?) will commonly fail in the attempt to frame particular provisions adequate to meet every possible exigency. The case of *Brooke* v. *Smith*, however,

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strongly shews the disposition of the Courts to aid any defect in the enumeration of particular cases by a liberal construction of the act. [It will be observed, that the power given by the 11th and 12th sections to Courts of Equity, to direct conveyances, extends to the case of a decree for sale for payment of debts under the statute 3 & 4 Will. 4, c. 104.

CONVEYANCE AND TRANSFER OF TRUST ESTATES.

2. THE STATUTES RELATING TO THE ESCHEAT AND FORFEITURE OF TRUST ESTATES, AND TO THE CONVEYANCE AND TRANSFER OF PROPERTY VESTED IN TRUSTEES UNDER DISABILITIES, &c.

Former enactments on this subject.

[THE first of the acts providing for the conveyance of trust estates in cases where such conveyance could not, without the assistance of the legislature, be obtained, was the 7 Anne, c. 19, which applied to the case of lands held in trust by *express* declaration becoming vested in an infant. See *Ex parte Vernon*, 2 P. W. 549. The stat. 2 Geo. 2, c. 10, extended the provisions of the former act to cases of lunacy, such lunacy being found by inquisition, (2 Ves. jun. 587). The 36 Geo. 3, c. 90, provided for the cases of trustees of stock, and their personal representatives, being out of the jurisdiction, bankrupt, or lunatic, or refusing to transfer the stock, or of its being unknown whether they were living or dead. The 1 & 2 Geo. 4, c. 114, extended these provisions to the cases of lunacy not found by inquisition. The former acts were repealed, and their provisions adopted and extended to the cases of trustees having *an interest* or *a duty* to perform, by the 6 Geo. 4, c. 74; but no provision was made for *constructive* trusts. The last-mentioned statute was repealed (except as to its repealing part) by the 11 Geo. 4 & 1 Will. 4, c. 60, which is as follows:—

Stat. 11 Geo. 4 & 1 Will. 4, c. 60.

"*An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees; and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases.*

Recites stat. 6, Geo. 4, c. 74.

"Whereas an act was passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for consolidating and amending the laws relating to conveyances and transfers of estates and funds vested in trustees, who are infants, idiots, lunatics, or trustees of unsound mind, or who cannot be compelled, or refuse, to act: and also the laws relating to stocks and securities belonging to infants, idiots, lunatics, and persons of unsound mind:' And whereas an act was passed in the Parliament of Ireland, in the

second year of the reign of King George the First, intituled 'An Act to enable infants who are seised or possessed of estates in fee, in trust or by way of mortgage, to make conveyances of such estates:' And whereas an act was passed in the Parliament of Ireland, in the fifth year of the reign of King George the Second, intituled 'An Act to enable idiots and lunatics, who are seised or possessed of estates in fee, or for lives or terms of years, in trust or by way of mortgage, to make conveyances, surrenders, or assignments of estates; and to prevent delay in suits in equity, where trustees are not found:' And whereas an act was passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled 'An Act to amend the laws in force in Ireland relating to conveyances and transfers of estates and funds vested in trustees:' And whereas it is expedient that the provisions of the said acts should be consolidated and enlarged; Be it therefore enacted, &c., That the said recited acts shall be and the same are hereby repealed, except so far as the same relate to stock belonging beneficially to infants or lunatics, and also except as to such proceedings of any description, under the same acts respectively, as shall have been commenced before the passing of this act, and which may be proceeded in according to the provisions of the said recited acts respectively, or according to the provisions of this act, as shall be thought expedient: Provided always, that the several acts repealed by the said first-recited act shall not be revived.

2 Geo. 1, (I.)

5 Geo. 2, (I.)

7 Geo. 4, c. 43.

Recited acts repealed, except as herein mentioned.

[Sect. 2. "And inasmuch as, in order to avoid unnecessary repetition, certain words are used in this act as describing subjects, some of which, according to their usual sense, such words would not embrace; for the understanding of the sense attached to them in this act, be it further enacted, That the provisions of this act shall extend to and include the several other estates and persons, matters, and things hereinafter mentioned: (that is to say), those relating to *land*, to any manor, messuage, tenement, hereditament, or real property, of whatever tenure, and to property of every description transferable otherwise than in books kept by any company or society, or any share thereof or interest therein; those relating to *stock*, to any fund, annuity, or security transferable in books kept by any company or society established or to be established, or to any money payable for the discharge or redemption thereof, or any share or interest therein; those relating to *dividends*, to interest or other annual produce; those relating to a *conveyance*, to any fine, recovery, release, surrender, assignment, or other assurance, including all acts, deeds, and things necessary for making and per-

Rules for the interpretation of this act.

"Land,"

"Stock,"

"Dividends,"

"Conveyance,"

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"Transfer," "Lunatic," "Heir," "Executor,"

fecting the same; those relating to a *transfer*, to any assignment, payment, or other disposition; those relating to a *lunatic*, to any idiot, or person of unsound mind, or incapable of managing his affairs; those relating to an *heir*, to any devisee or other real representative (*m*) by the common law or by custom, or otherwise; and those relating to an *executor*, to any administrator or other personal representative; unless there be something in the subject or context repugnant to such construction; and whenever this act, in describing or referring to any trustee or other person, or any trust, land, conveyance, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include, and shall be applied to, several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several trust lands, stocks, conveyances, matters, or things respectively, as well as one trust land, stock, conveyance, matter, or thing respectively, unless there be something in the subject or context repugnant to such construction."]

Gender and number.

LUNATIC TRUSTEES AND MORTGAGEES.

Where trustees or mortgagees of land are lunatic, the Lord Chancellor may direct the committees of such persons to convey land;

[Sect. 3. "And be it further enacted, That, where any person seised or possessed of any land *upon any trust or by way of mortgage* shall be lunatic, it shall be lawful for the committee of the estate of such person, by the direction of the Lord Chancellor of Great Britain, being intrusted by virtue of the king's sign manual with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind (*n*), to convey such land, in the place of such trustee or mortgagee, to such person, and in such manner, as the said Lord Chancellor shall think proper; and every such conveyance shall be as effectual as if the trustee or mortgagee being lunatic had been of sane mind, memory, and understanding, and had made and executed the same.

or may direct the committee or other person to transfer stock or funds standing in the name of a lunatic trustee, and receive the dividends.

Sect. 4. "And be it further enacted, That, where any *stock* shall be standing in the name of any person who shall be a lunatic, as a trustee or executor, alone or jointly with any other person, or shall continue to be standing in the name of a deceased person whose executor shall be lunatic, or shall be otherwise vested in or transferable by any person who shall be lunatic, for the benefit of some other

(*m*) [See *Brook* v. *Smith*, 2 Russ. & Myl. 73, *ante*, p. 419.]

(*n*) [The first proceeding under this section is, to direct an inquiry, whether the case is within the act; the order for which inquiry, as well as the subsequent order on the Master's report, can only be made by the Lord Chancellor. *Re Shorrocks*, 1 Myl. & Cr. 31; *Re Prideaux*, 2 Myl. & Cr. 640; overruling *Anonymous*, 5 Sim. 322.]

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person, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to direct the committee of the estate of any such lunatic to transfer, or join in transferring, such stock to or into the name of such person and in such manner as the said Lord Chancellor shall think proper; and also to order such person appointed as aforesaid to receive and pay over, or to join in receiving and paying over, the dividends of such stock in such manner as the said Lord Chancellor shall direct; and every such transfer, receipt, and payment shall be as effectual as if the person being lunatic had been of sane mind, memory, and understanding, and had transferred, received, and paid, or joined in transferring, receiving, and paying, such stock or dividends.

Lord Chancellor, before inquisition, may appoint a person to convey or transfer.

[Sect. 5. "And be it further enacted, That, where any such person as aforesaid being lunatic shall not have been found such by inquisition (*o*), it shall be lawful for the Lord Chancellor, intrusted as aforesaid, to direct any person whom the said Lord Chancellor may think proper to appoint for that purpose in the place of such last-mentioned lunatic, to convey or join in conveying such land, or to transfer or join in transferring such stock, and receive and pay over the dividends thereof, as hereinbefore is mentioned; and every such conveyance, transfer, receipt, or payment shall be as effectual as if the said person being lunatic had been of sane mind, memory, and understanding, and had made, done, or executed the same; but, where any sum of money shall be payable to such lunatic, no such last-mentioned order shall be made if such sum of money shall exceed £700; and where any sum not exceeding £700 shall be payable to such lunatic, and any such order shall be made, the Lord Chancellor, intrusted as aforesaid, shall direct to whom and in what manner the money so payable shall be paid; and every payment made in pursuance of such direction shall effectually discharge the person paying the same from the money which he shall so pay."]

INFANT TRUSTEES AND MORTGAGEES.

Infant trustees or mortgagees empowered to convey by the direction of the Court of Chancery.

[Sect. 6. "And be it further enacted, That, where any person *seised or possessed* of any land *upon any trust or by way of mortgage* shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the Court of Chancery, to convey the same to such person and in such manner as the said court shall

(*o*) [The Lord Chancellor of England has no jurisdiction to direct the transfer of stock by the committee of the lunatic's estate in Ireland, and, the lunatic having been found such by inquisition, the case does not come within the 5th section. *Re Tottenham*, 1 Jurist, 653.]

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think proper; and every such conveyance shall be as effectual as if the infant trustee or mortgagee had been, at the time of making or executing the same, of the age of twenty-one years.

Infant trustees or mortgagees of land within the jurisdiction of the courts of Lancaster, Chester, Durham, and Wales.

[Sect. 7. "And be it further enacted, That, where any person seised or possessed, upon any trust or by way of mortgage, of any land situated within the Duchy of Lancaster, or the counties palatine of Chester, Lancaster, and Durham respectively, or the principality of Wales, shall be under the age of twenty-one years, it shall be lawful for such infant, by the direction of the Court of the Duchy Chamber of Lancaster, the Court of Exchequer in the county palatine of Chester, the Court of Chancery in the county palatine of Lancaster, the Court of Chancery in the county palatine of Durham, and the several Courts of Great Session in Wales respectively (*p*), as to premises within the jurisdiction of the same courts respectively, to convey such lands to such person and in such manner as the said Courts respectively shall think proper, in like manner as such infant is hereinbefore empowered to convey the same by the direction of the Court of Chancery."]

TRUSTEES OUT OF THE JURISDICTION UNKNOWN, &c.

When trustees of real estates are out of the jurisdiction, or it is uncertain whether they be alive, or who may be the heir, the Court of Chancery may appoint a person to convey.

[Sect. 8. "And be it further enacted, That, where any person *seised* of any land *upon any trust* (*q*) shall be *out of the jurisdiction of*, or not amenable to the process of the Court of Chancery, or it shall be *uncertain, where there were several trustees, which of them was the survivor*, or it shall be *uncertain whether the trustee last known to have been seised as aforesaid be living or dead*, or, *if known to be dead, it shall not be known who is his heir;* or if any trustee seised as aforesaid, or the heir of any such trustee, shall *neglect or refuse to convey* such land for the space of twenty eight days next after a proper deed for making such conveyance shall have been tendered for his execution by, or by an agent duly authorized by, any person entitled to require the same; then, and in every such case, it shall be lawful for the said Court of Chancery to direct any person whom such court may think proper to appoint for that purpose, in the place of the trustee or heir, to convey (*r*) such land, to such person, and in such manner as the said court

[*p*] [The courts of Great Session in Wales, and of Session and Exchequer in the counties palatine of Chester, Lancaster, and Durham, are abolished. 11 Geo. 4 & 1 Will. 4, c. 70.]

(*q*) [This section does not apply to constructive trusts, (see sect. 12). *Re Dearden*, 3 Myl. & Kee. 508.]

(*r*) [The order directs the person to *convey*, not to "execute the deed in the place of the trustee." *Ex parte Foley*, 2 Jurist, 1012; 8 Sim. 395. The Court of Chancery, it seems, has jurisdiction to direct a surrender of copy-

shall think proper: and every such conveyance (*s*) shall be as effectual as if the trustees* seised as aforesaid, or his heir, had made and executed the same" (*t*).]

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* *Sic.*

TRUSTEES OF LEASEHOLDS.

When trustees of leasehold estates are out of the jurisdiction, &c.

[Sect. 9. "And be it further enacted, That, where any person possessed of any land for any term of years *upon any trust* shall be out of the jurisdiction of, or not amenable to the process of the Court of Chancery, or, it shall be uncertain whether the trustee last known to have been possessed as aforesaid be living or dead; or if any trustee possessed as aforesaid, or the executor of any such trustee, shall neglect or refuse to assign or surrender such land for the space of twenty-eight days next after a proper deed for making such assignment or surrender shall have been tendered for his execution by, or by an agent duly authorized by, any person entitled to require the same; then, and in every such case, it shall be lawful for the said Court of Chancery to direct any person whom such court may think proper to appoint for that purpose, in the place of the trustee or executor, to assign or surrender such land to such person and in such manner as the court shall think proper; and every such assignment or surrender shall be as effectual as if the trustee possessed as aforesaid, or his executor, had made and executed the same."]

TRUSTEES OF STOCKS OR FUNDS.

Transfer of stocks or funds.

[Sect. 10. "And be it further enacted, That, where any person in whose name, as a trustee or executor (either alone or together with the name of any other person), or in the name of whose testator (whether as a trustee or beneficially) any stock shall be standing, or any other person who shall otherwise have power to transfer or join with any other person in transferring, any stock to which some other person shall be beneficially entitled (*u*), shall be

holds by the person it appoints; and the lord must accept such surrender; and a mandamus will not be granted by the Court of Queen's Bench to compel the lord to do so. *Reg.* v. *Pitt*, 3 Jur. 1028.]

(*s*) [Where a conveyance has been tendered to a trustee to execute, and, on his refusal, a person has been ordered, under the above section, to convey, it is not necessary that he should execute a new deed reciting the order, but he may execute the deed tendered to the trustee: in the attestation clause to which it should be expressed, that he had executed it in the place of the trustee, in pursuance of the order. *Ex parte Foley*, 8 Sim. 395.]

(*t*) [This section does not, it will be observed, embrace the event of its being unknown whether the trustee has left an heir or not; the effect, indeed, of such an extension of it would be to deprive the crown of its escheat: [which has since been done by the statute 4 & 5 Will. 4, c. 23, *infra*, p. 436.]

(*u*) [See *Re Crowther*, 3 Jur. 21.]

out of the jurisdiction of or not amenable to the process of the Court of Chancery (*x*), or it shall be uncertain whether such person be living or dead; or if any such trustee or executor (*y*), or other person, shall neglect or refuse to transfer such stock, *or receive and pay over the dividends* (*z*) thereof to the person entitled thereto, or to any part thereof respectively, or as he shall direct, for the space of thirty-one days next after a request in writing for that purpose shall have been made to any such trustee or executor, or other person, by the person entitled as aforesaid; then, and in every or any such case, it shall be lawful for the Court of Chancery to direct such person as the said court shall think proper to appoint for that purpose in the place of such trustee or executor, or other person to transfer or join in transferring such stock to or into the name of such person and in such manner as such court shall direct, and also to order any person appointed as aforesaid to receive and pay over, or join in receiving and paying over, the dividends of such stock in such manner as the said court shall direct; and every such transfer, receipt, and payment, shall be as effectual as if the said trustee or executor, or other person, had transferred or joined in transferring such stock, or had received and paid, or joined in receiving and paying, the said dividends (*a*)."]

(*x*) [When the petition stated that the trustee was absent beyond sea, commanding a merchant vessel on an East India voyage, but that it was believed he would make no objection to the transfer, the Vice-Chancellor refused the order, not considering the trustee to be out of the jurisdiction of the court. *Hutchinson* v. *Stevens*, 5 Sim. 498.]

(*y*) [An executor who refuses to transfer stock, and who has neither proved the will nor renounced probate, is within this clause. *Ex parte Winter*, 5 Russ. 284, (a decision upon the stat. 6 Geo. 4, c. 74, s. 7): *Ex parte Hoggen*, 1 Beav. 98.]

(*z*) There is no analogous provision for the case of a trustee of *land* refusing to receive and pay over the rents.]

(*a*) [In *Re Anderson*, Cas. tem. Sugd. 27, an application was made under this act, to appoint new trustees of real estate and stock, on the death of the surviving trustee, to whom no administration was taken out, and whose heir was out of the jurisdiction. The application was refused by Sir E. *Sugden*, C., who said, "Sect. 8, refers to land generally; sect. 9, to land held for terms of years; which clause was purposely altered to make a distinction between the case of a real and a personal representative, as it was not intended to render administration unnecessary, by supplying a personal representative, but to provide only for the want of a real representative, because there was no other way of supplying such a representative. The 9th section, therefore, does not supply the want of a personal representative of a trustee of a chattel interest; and sect. 10, is just the same. Now this is a case where a trustee of stock has died and no personal representative has been obtained. There is no clause in the act to provide for such a case. You must go to the Ecclesiastical Court; and even when you have a personal representative, you cannot come here

MODE OF PROCEEDING, &c.

Directions or orders of the Court of Chancery, or by the Lord Chancellor, &c., under the authority of this act, to be made upon petition.

[Sect. 11. "And be it further enacted, That every direction or order to be made in pursuance of this act by the Lord Chancellor, intrusted as aforesaid, or by the Court of Chancery, or by any other court hereinbefore mentioned, shall be signified by an order to be made in any cause depending in such court respectively, or upon petition in the lunacy or matter (*b*); and such person as hereinafter is mentioned shall be the petitioner, whether such person be or be not under any legal disability; (that is to say), if the same shall relate to a conveyance, transfer, receipt, or payment to or in such manner as may be directed by any person beneficially entitled, then, upon the petition of the person, or some one of the persons beneficially entitled to the land, stock, or dividends to be conveyed, transferred, received, or paid; and if the same shall relate to a conveyance in order to vest any land or stock in a new trustee, duly appointed by virtue of some power or authority in some instrument creating or declaring the trusts of such land or stock, or by the Court of Chancery, either alone or together with any continuing trustee, then, upon the petition either of the trustee, or some or one of the trustees in whom the same shall be proposed to be vested, or of any person having an interest therein; and if the same shall relate to the conveyance of an estate in mortgage, then, upon the petition of the person or some one of the persons entitled to the equity of redemption thereof, or of the person or some or one of the persons entitled to the moneys thereby secured, or the guardian or committee, or some or one of the guardians or committees, of the person entitled to such moneys, if an infant or lunatic.

Lord Chancellor or court may

[Sect. 12. "Provided always, nevertheless, and be it further enacted, *That where on account of the length of time which shall*

to have a new trustee appointed under this act, because the trustee will be under no disability. It will be necessary, therefore, to file a bill to supply the defect in the settlement; and, you must file a bill to appoint new trustees of the personal estate; and as, of course, the same persons must be trustees of both properties, I shall make no order appointing a new trustee of the realty." It will be observed, that the above section does not provide for a case which sometimes occurs, that of stock which has been transferred into the name of an infant. See *Bannister* v. *Rogers*, 2 Jur. 393; *Watts* v. *Scrivens*, 1 Beav. 223.]

(*b*) [It is not necessary to intitle the petition "in the matter of the act." *Re Fowler*, 2 Russ. 449. Where, as above, a statute authorizes the court to act upon petition, the order cannot be made upon *motion*. *Baynes* v. *Baynes*, 9 Ves. 462.]

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direct a bill to be filed to establish the right.

have elapsed since the creation or last declaration of a trust, the title of the person claiming a conveyance or transfer may appear to require deliberate investigation in the presence of all parties interested, in order to prevent the vesting of the legal estate in a person who may not really be entitled to the benefit thereof; or if, *under other circumstances,* it shall appear to the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, or any other court hereinbefore mentioned, not proper to make an order upon petition (*c*); it shall be lawful for such Lord Chancellor, or any such court, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and upon the establishment by a decree of such right, by the same decree, or any order in the cause or in the lunacy, or both, to direct a conveyance or transfer to be made according to the intent of this act (*d*).

Committees, infants, &c., may be compelled to convey, transfer, &c.

[Sect. 13. "And be it further enacted, That any committee, infant, or other person directed by virtue of this act to make, or join in making, any conveyance or transfer, or receipt or payment, shall and may be compelled, by the order to be obtained as hereinbefore is mentioned, to make and execute the same in like manner as trustees of full age, and of sane mind, memory, and understanding, are compelled to convey, transfer, or receive, and pay over the trust estates or funds vested in them respectively.

Mortgage-money belonging to infants to be paid into the Bank, or as the court shall direct.

[Sect. 14. "And be it further enacted, That, where the person, or any of the persons to whom any money shall be payable, in or towards the redemption or discharge of any mortgage or incumbrance of which a release or conveyance shall be obtained under the powers of this act, shall be an infant, it shall be lawful for the person by whom such money shall be payable to pay the same into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery, or of the Court of Exchequer, to be placed to his account in trust in any cause then depending in the said court concerning such money, or, if there shall be no such cause, to the credit of such infant, subject to the order and disposi-

(*c*) [This enactment is not compulsory, and leaves the court a discretion, if it thinks fit, to make the usual order in a summary way. *Re de Clifford estates*, 2 Myl. & Kee. 624, overruling *Ex parte Merry*, Id. 677; and see *Ex parte Dover*, 5 Sim. 500.]

(*d*) [Where the court, by its decree, declares that the infant heir is a trustee, and the right of the party entitled to a conveyance is established by that decree, the decree may go on to direct a conveyance by the infant, a petition for that purpose being unnecessary. *Broom* v. *Broom*, 3 Myl. & Kee. 443: *Walton* v. *Merry*, 6 Sim. 328: *Miller* v. *Knight*, 1 Kee. 129: (overruling the cases of *Fellowes* v. *Till*, 5 Sim. 319, and *Prytharch* v. *Havard*, 6 Sim. 9).]

tion of the said court respectively, or to such person or persons, or in such other manner as the said court respectively shall direct; and the said court shall and is hereby empowered to order any money which shall so be paid into court to be invested in the public funds, and to order distribution thereof, or payment of the dividends thereof, as to the said court shall seem reasonable; and every cashier of the Bank of England who shall receive any such money is hereby required to give to the person paying the same a receipt for such money; and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received."]

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WHO TRUSTEES WITHIN THE ACT.

Act to extend to *trustees having an interest*, or having a *duty* to perform.

[Sect. 15. "And be it further enacted, That every person being in other respects within the meaning of this act shall be, and be deemed to be, a trustee within the meaning of this act, notwithstanding he may have some beneficial estate or interest in the same subject, or may have some duty as trustee to perform; but, in every such case, and in every case of a mortgagee, (not being a naked trustee), it shall be in the discretion of the said Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, if under the circumstances it shall seem requisite, to direct a bill to be filed to establish the right of the party seeking the conveyance or transfer, and not to make the order for such conveyance or transfer, unless by the decree to be made in such cause, or until after such decree shall have been made.

Representatives of *vendors*, to be trustees within this act, after a decree for specific performance, and persons in whose names purchases are made to be such trustees.

[Sect. 16. "And be it further enacted, That where any land shall have been contracted to be sold, and the vendor, or any of the vendors, shall have departed this life, either having received the purchase-money for the same or some part thereof, or not having received any part thereof, and a specific performance of such contract, either wholly or as far as the same remains to be executed, or as far as the same by reason of the infancy can be executed, shall have been decreed by the Court of Chancery in the lifetime of such vendor, or after his decease, and where one person shall have purchased an estate in the name of another, but the nominal purchaser shall, on the face of the conveyance, appear to be the real purchaser, and there shall be no declaration of trust from him, and a decree of the said court, either before or after the death of such nominal purchaser, shall have declared such nominal purchaser to be a trustee for the real purchaser, then and in every such case the heir of such vendor, or such nominal purchaser or his heir, in whom the pre-

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mises shall be vested, shall be and be deemed to be a trustee for the purchaser within the meaning of this act (*e*).

Tenants for life, &c., of estates devised in settlement, and contracted to be sold, may be directed to convey, after a decree for specific performance.

[Sect. 17. "And be it further enacted, That, where any land shall have been contracted to be sold, and the vendor, or any of the vendors, shall have departed this life, having devised the same in settlement so as to be vested in any person for life or other limited interest, with any remainder, limitation, or gift over, which may not be vested, or may be vested in some person for whom a conveyance of the same cannot be obtained, or by way of executory devise, and a specific performance of such contract, either wholly or so far as the same remained to be executed, shall have been decreed by the Court of Chancery, it shall be lawful for the Court by whom such decree shall be made, by the same or any other decree, or any decretal order, or upon petition in the cause, to direct any such tenant for life or other person having a limited interest, or the first executory devisee thereof, to convey the fee-simple or other the whole estate contracted to be sold to the purchaser, or in such manner as the said Court shall think proper; and every such conveyance shall be as effectual as if the person who shall make the same were seised of the fee-simple or other the whole estate contracted to be sold.

Act to extend to other constructive and resulting trusts, when declared by decree.

[Sect. 18. "And be it further enacted, That the several provisions hereinbefore contained shall extend to every other case of a *constructive trust*, or trust arising or resulting by implication of law; but, in every such case where the alleged trustee *has or claims* a beneficial interest adversely to the party seeking a conveyance or transfer, no order shall be made for the execution of a conveyance or transfer by such alleged trustee until after it has been declared by the Court of Chancery, *in a suit regularly instituted* in such Court, that such person is a trustee for the person so seeking a conveyance or transfer; but this act shall not extend to cases upon *partition*, or cases arising out *of the doctrine of election in equity*, or to a *vendor*, except in any case hereinbefore expressly provided for (*f*).

(*e*) [It will be observed, that, where a vendor dies pending the contract, leaving an infant heir, the act requires that a bill for specific performance should be filed; and the infant may be ordered by the decree to convey; and an order needs not be obtained by petition; *Walton* v. *Merry*, 6 Sim. 328; and the expense of the proceeding must be paid out of the purchase-money. Ib. See *Re Down*, *infra*, p. 432, n.]

(*f*) [An exchange of lands, whether money is given for equality of exchange or not, is not within the act. *Turner* v. *Edgell*, 1 Kee. 502.]

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Husbands of female trustees to be deemed trustees within the act.

[Sect. 19. "And be it further enacted, That, where any *feme covert* would be a trustee, mortgagee, heir, or executor, within the provisions of this act, if she were an infant or lunatic, or out of the jurisdiction or not amenable to the process of the Court of Chancery or Exchequer, or had refused or neglected as aforesaid to execute or make such conveyance, transfer, receipt, or payment as hereinbefore is mentioned, and the concurrence of her husband shall be necessary in any conveyance, transfer, receipt, or payment which ought to be made or executed by her as such trustee, mortgagee, heir, or executor, then and in any such case such husband, whether under any disability or not, shall be and be deemed to be a trustee within the meaning of this act.

Provisions as to lunacy to extend to all persons compellable to convey.

[Sect. 20. "And be it further enacted, That the provisions hereinbefore contained for obtaining conveyances from any person being lunatic shall extend to and include all persons being lunatic, who, by force of any law for payment of debts out of real estate, would, or hereafter may, be compellable to convey any land if of sound mind.

Act to extend to petitions in cases of charity and friendly societies.

[Sect. 21. "And be it further enacted, That the provisions hereinbefore contained shall extend and be construed to extend to all cases of petitions in which the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, or any of the judges thereof, is by law authorized and empowered to grant relief and make summary orders without suit, either in matters of charity, or relative to or for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof, or in matters relative to any benefit or friendly societies, or for the better security, or for the application, receipt, payment, or transfer, of any of the funds thereof."]

APPOINTMENT OF NEW TRUSTEES.

[Sect. 22. "And whereas cases may occur, upon applications (*g*)

(*g*) [This section is not a general authority to the court to appoint new trustees in every case where there may be no power to do so in the deed creating the trust, but only gives the court jurisdiction in cases where the party might apply by petition under the former sections of the act; that is, in cases of disability by reason of lunacy, infancy, &c., (or of the trustee being out of the jurisdiction, &c.; *Ex parte Boyne*, Cas. tem. Plunkett, 134: *Re Earl of Mayo*, Id. 124: *Re Fairewell*, 2 Jurist, 987). In other cases, a bill must be regularly filed for the purpose, under the general jurisdiction of the Court. "Many orders, I am informed, have been made as of course, under this section, granting a reference to the Master, and reports have been obtained, and orders made, confirming the reports. These orders

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the Lord Chancellor, or Court of Chancery, may appoint new trustees, upon petition.

by petition under this act for a conveyance or transfer (*h*), where the recent creation or declaration of the trust or other circumstances may render it safe and expedient (*i*) for the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, (as the case may require), to direct, by an order upon such petition, a conveyance or transfer to be made to a new trustee or trustees (*k*), without compelling the parties seeking such appointment to file a bill for that purpose, although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees (*l*); Be it therefore further enacted, That, in any such case, it shall be lawful for the Lord Chancellor, intrusted as aforesaid, or the said Court of Chancery, to appoint any person to be a new trustee, by an order to be made on a petition to be presented for a conveyance or transfer under this act, after hearing all such parties as the said Court shall think necessary (*m*); and thereupon a conveyance or transfer shall and may be made and executed, according to the provisions hereinbefore contained, to or so as to vest such land or stock in such new trustee, either alone or jointly with any surviving or continuing trustee, as effectually, and in the same manner, as if

are absolutely waste paper, and have no legal validity under the act. They will, I fear, very much embarrass titles." *Per Sugden*, C., *Re Fitzgerald*, Cas. tem. Sugd., 22. So, the act only applies to cases where conveyances are to be made; and, therefore, where one of three trustees for *sale* was out of the jurisdiction, the Vice-Chancellor refused to appoint a person in his place *to sell*, observing, that the course should have been to have sold, and then for the purchaser to have come to the court for a trustee to convey. *Re Down*, 2 Jur. 886. But what right could a purchaser from two of the trustees only, have acquired to a conveyance? Where it is suggested that the trustee named in the deed or will has not accepted the trusts, the court will not appoint trustees, without proof that the trusts have acquired existence by being accepted. *Re Clark*, 1 Jurist, 737.]

[It may be observed, that, in a suit for the appointment of new trustees, the court will not authorize the new trustees to appoint others in their room. *Brown* v. *Brown*, 3 You. & C. 395.]

(*h*) [Section 10 provides for the case of a trustee of stock refusing to receive and pay over the dividends; and, therefore, in such a case, a new trustee may be appointed under this section; but there is no provision for the case of a trustee of land so refusing to act.]

(*i*) [See *Re Nichols*, Cas. tem. Sugd. 17: *Re Whitley*, Id. 23.]

(*k*) [As to when executors are held to have exchanged their character of executors for trustees, so as to come within the section, see *Ex parte Dover*, 5 Sim. 500.]

(*l*) [The existence of a power to appoint new trustees in the instrument creating the trust does not prevent an appointment under this section. *Re Fauntleroy*, 3 Jur. 673.]

(*m*) [See *Ex parte Shick*, 5 Sim. 281. The court will make the order if satisfied, without directing a reference to the Master to approve the person proposed as a trustee. *Ex parte Inkersole*, 2 Gl. & Ja. 231.]

such new trustee had been appointed under a power in any instrument creating or declaring the trusts of such land or stock, or in a suit regularly instituted (*n*).

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Court of Chancery empowered to appoint new trustees of charities.

[Sect. 23. "And be it further enacted, That, where all the persons in whom any land may have been vested, in trust for any charity or charitable or public purpose, shall be dead, it shall be lawful for the Court of Chancery, on the petition of the persons or body administering such charity, or superintending such public purpose, or of any person on behalf thereof, to direct any master or other officer of the said court to cause two successive advertisements to be inserted in the London Gazette, and in one or more of the newspapers circulated in the county, city, or place where such land shall be situated, giving notice that the representative of the last surviving trustee do, within twenty-eight days, appear to give notice of his title to such master or other officer, and prove his pedigree or other title as trustee; and if no person shall appear to give such notice within such twenty-eight days, or the person who may appear or give such notice shall not, within thirty-one days after such appearance or notice, prove his title to the satisfaction of such master or other officer, then, and in such case, it shall be lawful for the said court to appoint any new trustees for such charity, or charitable or public purpose; and such land may be conveyed to such new trustees by any person whom the said court respectively may direct for that purpose, by virtue of the provisions in this act, without the necessity of any decree."]

OTHER PROVISIONS.

Manner of proceeding where trustees, defendants in equity, cannot be found.

[Sect. 24. "And be it further enacted, That where, in any suit commenced or to be commenced in the Court of Chancery, it shall be made to appear to the court, by affidavit, that diligent search and inquiry has* been made after any person made a defendant, who is

* *Sic.*

Remark upon the clause respecting the appointment of new trustees.

(*n*) [See *Re Welch*, 3 Myl. & Cr. 292.] As the procedure under this clause, though much less expensive and dilatory than the method formerly requisite of instituting a suit for the purpose, is attended with considerable expense, it is still desirable to frame powers so as to avoid the necessity of resorting to it. Taken literally, the statutory power only applies where there is *no* power of appointing trustees in the instrument creating the trust, and not where there is a defective one; the words being "although there is no power in any deed or instrument creating or declaring the trusts of such land or stock to appoint new trustees:" but there can be no doubt that it would be extended in construction to the case suggested; the words, "no power," being read as importing no power *applicable to the events or circumstances which have occurred*. See further as to the appointment of new trustees, *post*, title, "NOMINATION OF NEW TRUSTEES."

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only a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the said court to hear and determine such cause, and to make such absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the court, and had appeared and filed his answer thereto, and had also appeared by his counsel and clerk at the hearing of such cause: Provided always, that no such decree shall bind, effect, or in anywise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the time of making such decree, for his own use or benefit, or otherwise than as a trustee as aforesaid.

Costs may be directed to be paid.

[Sect. 25. "And be it further enacted, That the Lord Chancellor, intrusted as aforesaid, and the Court of Chancery, may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, and transfers to be made in pursuance of this act, or any of them, to be paid and raised out of or from the land or stock, or the rents or dividends in respect of which the same respectively shall be made, or in such other manner as the said Lord Chancellor or court shall think proper (*o*).

Powers given to the Lord Chancellor of Great Britain;

[Sect. 26. "And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall extend to all land and stock within any of the dominions, plantations, and colonies belonging to his Majesty (except Scotland and Ireland).

—which may be exercised by the Lord Chancellor of Ireland.

[Sect. 27. "And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by, and are hereby given to the Lord Chancellor of Ireland, intrusted as aforesaid, with respect to all land and stock in Ireland.

Powers given to the Lord Chancellor to extend to the Lord Keeper and Commissioners.

[Sect. 28. "And be it further enacted, That the powers and authorities given by this act to the Lord Chancellor of Great Britain, intrusted as aforesaid, shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Great Britain for the time being, intrusted as aforesaid; and the powers and authorities given by this act to the Lord

(*o*) [In a suit for specific performance brought against the vendor's infant heir, the costs must be paid out of the purchase-money. *Prytharch* v. *Havard*, 6 Sim. 9; *Walter* v. *Merry*, Id. 328.]

Chancellor of Ireland, intrusted as aforesaid, shall and may be exercised in like manner by and are hereby given to the Lord Keeper or Commissioners of the Great Seal of Ireland for the time being, intrusted as aforesaid.

Powers given to the Court of Chancery in England;

[Sect. 29. "And be it further enacted, That the powers and authorities given by this act to the Court of Chancery in England shall extend to all land and stock within any of the dominions, plantations, and colonies belonging to his Majesty (except Scotland) (*p*).

—which may be exercised by the Court of Exchequer.

[Sect. 30. "And be it further enacted, That the powers and authorities given by this act to the Court of Chancery, and the provisions contained in this act relating to the said Court, shall and may be exercised in like manner by and are hereby given and extended to the Court of Exchequer.

Powers given to courts in England may be exercised by the same courts in Ireland.

[Sect. 31. "And be it further enacted, That the powers and authorities given by this act to the Courts of Chancery and Exchequer in England and the provisions contained in this act relating to the same Courts, shall and may be exercised in like manner, and are hereby given and extended to the several Courts of Chancery and Exchequer in Ireland, with respect to all land and stock in Ireland.

Who shall be named in the orders of the court for making transfers.

[Sect. 32. "Provided always, and be it further enacted, That, in all cases in which orders shall be made, in pursuance of this act, for the transfer of stock, the person to be named in such order for making such transfer shall either be the committee of the estate of the person being lunatic in whose place such transfer shall be made, or a co-trustee or a co-executor of the person in whose place such person shall be directed to transfer, or some officer of the company or society in whose books the same respectively shall be directed to be made; and, where such transfer shall be directed to be made in books kept by the governor and company of the Bank of England, such officer shall be the secretary or deputy-secretary or accountant-general for the time being of the said governor and company, or his deputy.

Act to be an indemnity to the Bank and other companies.

[Sect. 33. "And be it further enacted, That this act shall be and is hereby declared to be a full and complete indemnity and discharge to the governor and company of the Bank of England, and all other companies and societies, and their officers and servants, for all acts and things done or permitted to be done pursuant thereto;

(*p*) [The act does not apply to land out of the Queen's dominions. *Price* v. *Dewhurst*, 8 Sim. 619.]

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and that such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment."]

4 & 5 Will. 4, c. 23. Royal assent, June 27, 1834.

[The statute 4 & 5 Will. 4, c. 23, intituled, "*An Act for the Amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in Trust,*" enacts—

Description of estates and matters included in the provisions of this act, and construction of terms used.

[Sect. 1. "That the provisions of this act shall extend to and include the several estates and persons, matters and things, hereinafter mentioned; (that is to say), those relating to *land*, to any manor, messuage, tenement, hereditament, or real property, whether freehold, customaryhold, copyhold, or of any tenure whatever; those relating to *chattels*, to personal property of every description capable of being transferred or disposed of, otherwise than in books kept by any company or society, or to any share thereof or interest therein; those relating to *stock*, to any fund, annuity, or security transferable, in books kept by any company or society established or to be established, or to any money payable for the discharge and redemption thereof, or to any share or interest therein; those relating to *dividends*, to interest, or other annual produce; those relating to a *conveyance*, to any lease and release, surrender, or other assurance of real property, including all acts and deeds necessary for making and perfecting the same; those relating to an *assignment*, to any surrender, delivery, or other disposition of the personal property, and to all acts, deeds, and things necessary for making and perfecting the same; those relating to a *transfer*, to any payment or other disposition of stock; those relating to an *heir*, to any devisee, or other real representative by the common law, or by custom or otherwise; and those relating to an *executor*, to any administrator, or other personal representative; unless there be something in the subject or context repugnant to such construction: and whenever this act, in describing or referring to any trustee or other person, or any trust, land, stock, conveyance, assignment, transfer, grant, matter, or thing, uses the word importing the singular number or the masculine gender only, the same shall be understood to include and shall be applied to several persons as well as one person, and females as well as males, and bodies corporate as well as individuals, and several trusts, lands, stocks, conveyances, assignments, transfers, grants, matters, or things respectively, as well as one trust, land, stock, conveyance, assignment, transfer, grant, matter, or thing respectively, unless there be something in the subject or context repugnant to such construction.

"Land,"
"Chattels,"
"Stock,"
"Dividends,"
"Conveyance,"
"Assignment,"
"Transfer,"
"Heir,"
"Executor,"

Number and gender.

If trustee or

[Sect. 2. "That where any person seised of any land upon any

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trust or by way of mortgage dies without an heir, it shall be lawful for the Court of Chancery to appoint a person to convey such land, in like manner as is provided by the act of the eleventh year of King George the Fourth and the first year of his present majesty, intituled 'An Act for amending the laws respecting conveyances and transfers of estates and funds vested in trustees and mortgagees, and for enabling courts of equity to give effect to their decrees and orders in certain cases,' in case such trustee or mortgagee had left an heir, and it was not known who was such heir; and such conveyance shall be as effectual as if there was such heir.

mortgagee of any land die without an heir, Court of Chancery may appoint a person to convey.

[Sect. 3. "That no land, chattels, or stock vested in any person upon any trust or by way of mortgage, or any profits thereof, shall escheat or be forfeited to his majesty, his heirs or successors, or to any corporation, lord of a manor, or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place.

Lands, &c., vested in any trustee shall not be escheated by reason of the attainder of such trustee.

[Sect. 4. "That the several provisions of this act shall extend to every case of a trustee having some beneficial estate or interest in the same subject, or some duty as trustee to perform, and also to every case of a trust arising or resulting by implication of law or by construction of equity.

To whom and to what cases this act shall extend.

[Sect. 5 provides, "That nothing contained in this act shall prevent the escheat or forfeiture of any land, chattels, or stock, vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such land, chattels, or stock, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this act had not passed.

This act not to prevent the escheat of any beneficial interest.

[Sect. 6. "That, in all cases where, before the passing of this act any person possessed of or entitled to any land, chattels, or stock, or any right to or interest in any land, chattels, or stock, as a trustee thereof, either in whole or in part, or jointly with some other trustee or trustees, shall have died without an heir, or shall have been convicted of any offence (*q*) whereby the said land, chattels, or stock, or any of them, have escheated or been forfeited, or have become subject to any escheat or forfeiture, then and in every or any such case the said land, chattels, or stock, or the right thereto, or interest therein, which hath escheated or been

Where any person possessing lands, &c., as a trustee, shall have died without heirs, or have been convicted, before the passing of this act, the lands, &c. shall become subject to the control of the Court of Chancery.

(*q*) [See *In re Tyson*, 1 Jurist, 281, 472.]

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forfeited, or become subject to escheat or forfeiture by reason thereof, shall be subject to the order, control, and disposition of the Court of Chancery, for the use of the party beneficially interested therein, in such manner, and subject in all respects to such right and incidents, and to such orders and regulations of the said court, under the provisions of the said act of the eleventh year of King George the Fourth and of the first year of his present majesty, as if such person so dead without an heir, or so convicted, as aforesaid, were out of the jurisdiction of or not amenable to the process of the said court, without having been so convicted: Provided always, that nothing in this clause contained shall extend to any land, chattels, or stock now vested in any person by virtue of any grant (*q*) thereof, made subsequently to the time when such escheat or forfeiture first occurred, or to any land, chattels, or stock, which, more than twenty years prior to the passing of this act, shall have been actually vested in possession or reduced into possession by the party entitled thereto by virtue of any such escheat or forfeiture."]

Proviso.

Stat. 1 & 2 Vict. c. 69. Royal assent, Aug. 4, 1838.

[The statute 1 & 2 Vict. c. 69, intituled, "*An Act to remove Doubts respecting Conveyances of Estates vested in Heirs and Devisees of Mortgagees,*" after reciting the 11 Geo. 4 & 1 Will. 4. c. 60, ss. 8 & 18, and the 4 & 5 Will. 4, c. 23, s. 2, and that doubts had arisen on their construction, enacts—

In certain cases to which it is doubtful whether the recited act extends, the Court of Chancery to appoint persons in the place of the devisee, heir, &c., to convey land, &c.

[Sect. 1. "That where any person seised of any land by way of mortgage shall have departed this life without having been in possession of such land or in the receipt of the rents and profits thereof and the money due in respect of such mortgage shall have been or shall be paid to his executor or administrator, and the devisee or heir or other real representative, or any of the devisees or heirs or real representatives of such mortgagee shall be out of the jurisdiction or not amenable to the process of the Court of Chancery, or it shall be uncertain, where there were several devisees or representatives who were joint tenants, which of them was the survivor, or it shall be uncertain whether any such devisee, or heir, or representative be living or dead, or if known to be dead it shall not be known who was his heir, or where such mortgagee, or any such devisee, or heir, or representative shall have died without an heir; or if any such devisee, or heir, or representative, shall neglect or refuse to convey such land for the space of twenty-eight days next after a proper deed for making such conveyance shall have been tendered for his

(*q*) [As to the evidence requisite to establish the non-existence of such a grant see *Ex parte Tyson*, 1 Jurist, 281, 472.]

execution by, or by an agent duly authorized by, any person entitled to require the same (*r*), then, and in every such case, it shall be lawful for the said Court of Chancery to direct any person whom such court may think proper to appoint for that purpose in the place of the devisee, heir, or representative, (whether such devisee, heir, or representative, shall or shall not have a beneficial interest in the money paid to the executor or administrator as aforesaid), to convey such land, in like manner as by the said first-recited act the said court is empowered to appoint a person to convey in the cases therein mentioned, in the place of a trustee or the heir of a trustee, and every such conveyance shall be as effectual as if such devisee, or heir, or representative, had executed the same.

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[Sect. 2. "That the words used in this act shall have the same effect in England and in Ireland, and shall embrace the same objects as they would have had and embraced if the provisions hereinbefore contained had formed part of the said recited acts, or either of them.

Act to extend to England and Ireland, &c., and to be construed as part of recited acts.

[Sect. 3. "Provided always, and be it hereby enacted and declared, *That the said recited Acts, or either of them, shall not be construed to extend to any case of any person dying seised of any land by way of mortgage other than such as are hereinbefore expressly provided for.*"]

Recited acts to extend only to mortgages herein provided for.

According to the construction which has been given to the stat. 11 Geo. 4 & 1 Will. 4, c. 47, in the case of *Brooke* v. *Smith*, (*vide ante*, p. 419), it should seem that the 17th section of the 11 Geo. 4 & 1 Will. 4, c. 60, would extend to the case of a devisee by the *heir* or *devisee* of a vendor, as well as by a vendor himself; and, according to the suggested construction of the 12th section of the former act, (*ante*, p. 419), it is probable that the 17th section of the present act would be held to apply to an heir taking a defeasible fee by descent, the words "may be vested in some person from whom a conveyance of the same cannot be obtained," being read as extending to a vesting *by any other means* than by devise.

Remarks upon the statute 11 Geo. 4 & 1 Will. 4, c. 60.

The 18th section, extending the provisions of the act to *constructive* trusts, which is an important addition in the present statute, it will be observed, excepts cases in which the "alleged trustee has or claims a beneficial interest adversely to the party seeking a conveyance or transfer," and requires, in such cases, that a suit should have been instituted, and an adjudication by the Court declaring the

What are *constructive* trusts within the meaning of the statute.

(*r*) [Where the trustee refuses to convey, and one of the *cestui que trusts* is under disability, it would seem that this section does not apply.]

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party to be a trustee. This proviso greatly narrows the operation of the clause, for, in far the greater number of cases of constructive trusts, the alleged trustee has an interest adverse to that of the person claiming under the trust. Indeed, it seems difficult to conceive a case in which a person should be a *constructive* trustee without having such an opposing interest. In the case of an *express* trust, it frequently happens that a man is clearly a trustee for *some* person, but it is uncertain for whom, and he has therefore no interest in the agitation of the question, whether he is a trustee for one claimant or another; but this can scarcely happen under a constructive trust. Is it possible to suggest a case in which such a trust can exist, unless where the beneficial interest, not drawn out of the party by the trust thus created, belongs to himself? To mention two common instances of implied and constructive trusts: where a man buys an estate in the name of a stranger, or covenants to settle lands on his marriage, the heir-at-law of the apparent purchaser in the former instance, and of the covenantor in the latter, would, if the trust were established, hold the property for the benefit of another, which in the alternative event would belong to himself. His interest, therefore, is obviously adverse. The Editor will not venture to affirm that there can be no case of a constructive trust, to which the proviso in the 18th section would not extend, but certainly his own mind at this moment does not supply him with any. The Courts would of course be anxious to avoid, if possible, giving the proviso a construction which would render the clause nugatory.

Whether *mortgagees* are within the 8th sect. of 11 Geo. 4 & 1 Will. 4, c. 60.

[Sects. 3, 6, & 7 of the stat. 11 Geo. 4 & 1 Will. 4, c. 60, provide for the lunacy and infancy of persons seised or possessed of land, "upon any trust or *by way of mortgage*;" and the 8th section provides for the cases of any person "seised of any land *upon any trust*" being out of the jurisdiction of the Court of Chancery,—of its being uncertain, where there were several *trustees*, which of them was the survivor,—of its being uncertain whether the last known *trustee* be living or dead, or if known to be dead, who is his heir,—and of a *trustee* or his heir neglecting or refusing to convey; but does not mention *mortgagees*. This omission, and some other minute but significant variations from the language of the former sections of the act, appear to have been designed, (see *Ex parte Anderson*, ante, p. 426); and it was held in several cases, that *mortgagees* were not *trustees* within the meaning of this act, and, therefore, were not within the 8th section, in which they were not named. *Ex parte Stanley*, 5 Sim. 320: *Re Goddard*, 1 Myl. & Kee. 25:

Ex parte Payne, 6 Sim. 645: *Re Dearden*, 3 Myl. & Kee. 508: *Prendergast* v. *Eyre*, Cas. Tem. Sugd. 13, in which last case Sir E. Sugden, concurring in the decision in *Re Goddard*, held, that the heir of a mortgagee, who had in his lifetime obtained a decree for sale, was a *trustee* within the 8th and 18th sections.]

[But the second section of the stat. 4 & 5 Will. 4, c. 23, (*ante*, p. 436), in which it is assumed, that the eighth section of the act under consideration does apply to mortgages, was considered by Lord *Langdale* to amount to an *explanation* of the former act; and an order, directing a person to convey in the place of the heir of a deceased trustee, who could not be found, was accordingly made, under the eighth section so explained. *Ex parte Whitton*, Aug. 1836, 1 Kee. 278: *Ex parte Stanley*, 7 Sim. 170. The subsequent passing, however, of the stat. 1 & 2 Vict. c. 69, *ante*, p. 439, (which was brought in by Lord *Langdale*), not only threw a doubt upon the propriety of the decision in *Ex parte Whitton*, but created fresh difficulties. Among the contingencies *not* provided for in the last-mentioned act, are that of the heir of a mortgagee being an infant, and that of its being uncertain whether the deceased mortgagee left an heir; the former of which *is* provided for by the 11 Geo. 4 & 1 Will. 4, c. 60; but by the 3rd section of the 1 & 2 Vict. c. 69, it is enacted, that "the said recited acts (*s*), or either of them, shall not be construed to extend to any case of any person dying seised of any land by way of mortgage, other than such as are hereinbefore expressly provided for." The cases of *Re Wilson's Estate*, and *Re Gathorne*, 8 Sim. 392, in which the effect of the enactment came in question, and which were heard together, were as follow:—

[In the first case, the mortgage-money had been paid to the mortgagee's administrator; and *it not being known whether the mortgagee had left an heir*, a petition was presented by the mortgagor's devisee, praying that some person might be appointed to convey, in place of the heir.]

[In the second case, a petition was presented by the devisee of the mortgagor of a copyhold, praying that the *infant heir* of the mortgagee having been admitted, might be ordered to surrender the estate to the petitioner.]

[The Vice-Chancellor said, that the third section of the 1 & 2 Vict. c. 69, *seemed to have repealed the* 11 Geo. 4 & 1 Will. 4, c. 60, *and* 4 & 5 Will. 4, c. 23, so far as those acts related to mortgagees

(*s*) [Namely, the 1 Will. 4, c. 60, ss. 8 & 18, and 4 & 5 Will. 4, c. 23, s. 2.]

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and their heirs; but that he did not think *it was intended* to have that effect, and therefore he would consult the Master of the Rolls upon the subject. On a subsequent occasion, his Honor said, "I have consulted the Master of the Rolls, relative to the construction that ought to be put upon the 3rd section of the 1 & 2 Vict. c. 69; *and his Lordship has informed me that it was not intended to repeal any part of the two former acts*, but that those acts are to be construed just as before; and that the first-mentioned act is intended to apply to those cases only which it expressly provides for. It was never meant, therefore, that such a construction should be put upon it as would prevent the former acts from applying to the case of an infant heir of a mortgagee. The third section was introduced into the act by Sir *E. Sugden*, in order to confine *its* (*t*) application to those cases which are expressly mentioned in it. The two former acts being remedial acts, I have always thought that it would have been better originally to have construed them liberally, rather than incumber them with explanatory and additional enactments; and when the present difficulty was suggested to me, it appeared to me unreasonable, that an act, which was meant to provide for cases which it was supposed the former acts meant to provide for, should receive a construction narrowing instead of extending their operation. In *Gathorne's case*, therefore, I make the order."]

["The case of *Wilson's* estate was this:—it was uncertain whether the person who was the mortgagee had left an heir; and Lord *Langdale* thinks, that, though it is not within the 1 & 2 Vict. c. 69, yet it is within the 11 Geo. 4 & 1 Will. 4, c. 60; and, therefore, I make the order in that case also."]

Remarks on *Gathorne's case*, and *Wilson's case*.

[The above decisions were founded both on consideration of the inconvenience which would attend a different construction of the recent act, and on the information gained from the framer of it, as to *his* intention when it was framed; on either of which grounds, it is very much to be regretted that any judicial exposition of an act of Parliament should ever have been pronounced. The order in *Wilson's case* might seem to be open to this further objection, that the 8th section of the 11 Geo. 4 & 1 Will. 4, c. 60, (admitting that it ever applied to mortgagees, and that it is unrepealed), although it mentions the contingency of its being unknown who was the heir of

(*t*) [This statement is irreconcileable with the language of the third section, which restrains not the act in which it occurs, but the prior acts.]

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a deceased trustee, does not mention that of its being unknown whether there was such an heir or not; to which, undoubtedly, it would have been held not to extend, prior to the passing of the Escheat and Forfeiture Act (4 & 5 Will. 4, c. 23); although, perhaps, the 2nd section of that act may be considered to have removed the difficulty.]

Original mortgagee not within the acts.

[In a subsequent case (*Green* v. *Holden*, 1 Beav. 207), Lord *Langdale* held, that the case of the mortgagee himself of an estate sold under a decree, being out of the jurisdiction, was within neither the 11 Geo. 4 & 1 Will. 4, c. 60, nor the 1 & 2 Vict. c. 69. His Lordship said, that doubt had arisen respecting the order which he had made in *Ex parte Whitton;* and that the act 1 & 2 Vict. c. 69, had passed for the purpose of declaring that the summary jurisdiction was given in cases where mortgagees died seised of the land without having been in possession or receipt of the rents. *Ex parte Whitton* was founded on the supposition, that the eighth section of the 11 Geo. 4 & 1 Will. 4, c. 60, taken in connexion with the 4 & 5 Will. 4, c. 23, applied to mortgagees as well as trustees; but the stat. 1 & 2 Vict. c. 69, having declared that the statutes 11 Geo. 4 & 1 Will. 4, c. 60, and 4 & 5 Will. 4, c. 23, should not be construed to extend to any cases of mortgagees dying seised of land except those expressly provided for, appeared to him at the same time to preclude the extension of the effect of the 8th section of 1 Will. 4, c. 60, by construction, to any other case of mortgage. He had been informed by the Vice-Chancellor, that it had been submitted to him, that the effect of sect. 3 of the 1 & 2 Vict. c. 69, was to repeal the *sixth* section of the 11 Geo. 4 & 1 Will. 4, c. 60; but he (the Master of the Rolls) had stated, that in his opinion sect. 3 of the 1 & 2 Vict. c. 69, had no such effect. *There was a misapprehension if he had been supposed to state, that the same enactment did not affect the construction which had been previously put upon the* eighth *section of the* 11 *Geo.* 4 & 1 *Will.* 4, c. 60.]

[It appears, therefore, from the construction put upon the third section of the 1 & 2 Vict. c. 69, by Lord *Langdale*, that that section should be read thus:—Provided, "that the said recited [provisions of the] said acts, or either of them, shall not be construed to extend to any case of any person dying seised of any land by way of mortgage, other than such as are hereinbefore expressly provided for;" introducing the words within brackets to confine the operation of the clause to the recited sections of these acts, namely, the eighth of the 11 Geo. 4 & 1 Will. 4, c. 60, and the second of the 4 & 5 Will. 4, c. 23.]

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[This decision of the Master of the Rolls, it will be observed, is directly at variance with what was said and done by the Vice-Chancellor in the case of *Wilson's Estate;* and leaves the interpretation of the 8th section of the 11 Geo. 4 & 1 Will. 4, c. 90, as it was settled before the passing of the 4 & 5 Will. 4, c. 23.]

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Presuming reconveyances of legal estates.

As to the doctrine of presuming reconveyances of legal estates.

Scarcely any doctrine more imperatively claims the sedulous attention of the student and practitioner of the law of real property than that which relates to the presumption of conveyances of outstanding legal estates. Its importance is not confined to the mere question, whether an estate ought or ought not to be got in under particular circumstances, though this, from the frequency of its occurrence, is a matter of no small consideration; but, indirectly, it often materially bears upon the title to the beneficial ownership. The liability of lands to dower, judgments, and other incumbrances, or the validity of common recoveries, is frequently involved in the question, whether the presumption of a conveyance of the legal estate can be legitimately sustained. A general view of the cases, therefore, cannot be without use; though an examination of them may not wholly free the subject from those difficulties which have long rendered its application a task of much embarrassment and perplexity, in the deduction and investigation of titles.

The most simple and obvious instance of the application of the doctrine of presumption arises where an estate has been conveyed for a specific purpose, which purpose was accomplished at some antecedent point of time, when the estate ought to have been reconveyed; but no evidence exists of such conveyance having been made. In this case, if the enjoyment have corresponded with the legal title which such conveyance, if made, would have conferred, the conclusion, after a reasonable lapse of time, is, that the equitable limitations have been actually clothed with the legal estate.

Reconveyance may be presumed as between vendor and purchaser.

And this doctrine of presumption applies as between vendor and purchaser, *i. e.* a vendor is allowed to insist on the presumed conveyance of an estate, as a ground for refusing to obtain such conveyance; it seems formerly the rule was otherwise; it being considered that a purchaser was entitled to have an actual conveyance of all estates which at any period had been outstanding, and were not barred by the Statute of Limitations. See 1 Sugd. Vend.

9th ed. 350. Modern determinations, however, establish the position, that, if the presumption is so clear that a judge sitting in a court of law would direct (*i. e.* ought, in the opinion of the Court of Equity, to direct) a jury to presume a reconveyance, the purchaser is not entitled to insist upon a conveyance being obtained.

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One of the earliest and leading authorities for this doctrine is the case of *Hillary* v. *Waller*, 12 Ves. 239, which was a bill for the specific performance of a contract against a purchaser, who objected to the title on the following ground:—In 1664, Fingreth Hall Farm, the estate in question, was conveyed by lease and release by A. to B. and his heirs, upon trust (subject to the payment of two life-annuities, one to A., and the other to C., his wife), as a collateral security to G. and K. for the title of the manor of H., which they had lately purchased, and in the meantime, until G. and K. should be evicted, upon trust to pay the rents to M. and I. for their lives successively, and then to such persons as they, or I. surviving, should appoint; with a further trust, that in case there should be no eviction of G. and K. out of the manor of C. before the expiration of eleven years after the death of A., and I., or, in case there should be such eviction, *if B., his heirs, &c., should not be evicted of the estate in question* (*u*), then he or they should convey to M., or, if dead, to such persons as she and I., or I. alone, after her decease, shall appoint, *one full moiety* of the manor of Fingreth Hall; and it was declared, that the assurance thereby made was so made only for a collateral security to G. and K., of the title of the manor of H. In 1694, a settlement was made of the Fingreth Hall Farm on the marriage of a daughter of M.; and, in the covenant against incumbrances, an exception was made of the conveyance to B., as a collateral security to indemnify him, his heirs and assigns, from any incumbrance upon the manor and premises purchased by him or his trustees. In 1737, the tenant for life under the settlement of 1694, and the co-heirs of the survivor of the trustees, granted a lease of the Fingreth Hall estate; and in 1750 the tenant for life and tenant in tail suffered a common recovery, under which the vendor claimed. It was objected by the purchaser, that, under these circumstances, the legal estate must be considered to be outstanding upon the trusts

Case of *Hillary* v. *Waller*.

(*u*) These words are not very intelligible, for, if there was such an eviction, how could B. convey the estate at all? [The meaning may have been, — "in case B., &c., should not be evicted by G. and K. requiring the estate to be conveyed to them by way of compensation."]

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of the indenture of 1664; but Sir *W. Grant*, M. R., was of opinion that a reconveyance was to be presumed. "If we could at any time ascertain," said his Honor, "at what period the legal estate ought to have been reconveyed, I see no reason why the presumption of its being reconveyed at that period should not be made. The difficulty here is, that by the deed of 1664, it is only as to a moiety of the estate that any time is limited for the reconveyance. It could not, however, be meant that the legal estate in any part should continue outstanding for ever. The conveyance of it was made for a purpose that must have some limit. It was by way of security against the eviction of the H. estate. At what precise moment the danger of eviction ceased it is impossible to say; but, if the time that has elapsed without claim,—140 years,—does not furnish the inference that none can be made, I do not know what period would be sufficient for that purpose. Mere possibilities ought not to be regarded. The court, as Lord *Hardwicke* says, in the case of *Lyddal* v. *Weston*, 2 Atk. 19, must govern itself by a moral certainty; for, it is impossible, in the nature of things, that there should be a mathematical certainty of a good title. He adds, there are often suggestions of old entails, and often doubts what issue persons have left, whether more or fewer: and yet these were never allowed to be objections of that force as to overturn a title to an estate. So, here, we have possible grounds of claim; but no man can believe that the owners of the H. estate feel any apprehension of eviction by title existing prior to 1664; or that they would at any time, during the last sixty years have had the least objection to direct a reconveyance of the Fingreth Hall estate, if the person in whom the legal estate is vested could have been discovered; why, then, should not such reconveyance be presumed?" His Honor accordingly overruled the objection to the title. An appeal from the decree at the Rolls was made to Lord *Erskine*, before whom the case underwent further consideration. His Lordship was of opinion, that, upon the construction of the deed, it was clear that the trusts for indemnity, as to the *entire estate*, were to cease at the end of eleven years. "There was," he said, "to be security against some incumbrances, to have a speedy termination; for such an indemnity as an estate vested in trustees as an indemnity, not only against incumbrances likely to appear speedily, but at the distance of 1000 years, without any specific danger in the minds of the parties, has never occurred. A title is impeached on account of some specific objection, depending upon something to happen in a few years, and the indemnity must be co-extensive with the objection. The whole of this estate originally

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was conveyed to B. That is the infirmity of the case,—that the whole was conveyed. The object of the conveyance was, first, to secure the annuities to A. and C., the latter continuing alive till 1694; and then this strange clause is inserted, which means, that, in case of eviction, the trustee shall convey one half of this estate to the uses of the settlement. Upon what ground? The whole estate being originally in my trustee for my indemnity, upon what ground, if I am evicted, is one half to be so conveyed? Through all this obscurity, I can see the intention, that eleven years were the expected period of the infirmity of the title; and, after that period, this moiety was to be conveyed, not the remainder of the estate, for there was another security to be answered. That could not be conveyed till C. was dead. A moiety was to be conveyed, as there was then an end of the obscurity and infirmity belonging to the title; but the residue was not to go out of the trustee, as C. was living. I am bound to presume, that, whenever the danger of the H. estate was at an end, when that time arrived, which was designated by the period of eleven years, or any period at which it could be said there was no more danger, then that estate was to be saleable, and a reconveyance was to be made. There is an answer then, as to the length of time. Am I not to presume that H. is a good estate to the purchaser? It has not been disturbed for 140 years. If any claim were now set up, is it possible to say such a plaintiff could recover in ejectment? If that could be supposed, would not this court grant a perpetual injunction against him, upon such a title, after uninterrupted possession for 140 years? Here, then, is the application of these principles—I presume a conveyance from the trustee of the estate intended as an indemnity against incumbrance, when, for a century and more, every idea of an incumbrance has been at an end; and, if these presumptions are made after twenty or thirty years, because, the party being out of possession, all presumption is against him, I make it in this instance. It would be very different, if the intention had not appeared upon the deed. But, when the time is designated, *viz.* eleven years, if I cannot do this at the end of 140 years, it is admitted, this objection must continue to any period. By supporting this objection, I should lay down a rule most dangerous, and destroy the very reason of legal presumption. There is a defect and omission in the deed not providing, that when the annuities are satisfied, there shall be a conveyance of the other moiety. My judgment is, that, at this distance of time, I ought to presume that this reconveyance has been made. I agree, I must make that presumption.

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My judgment is founded upon this; and I make the presumption without sending it to law; being confident a judge must tell a jury they ought to presume, and they would presume, that this reconveyance had been made." Upon these grounds his Lordship affirmed the decree of the Master of the Rolls.

Remarks upon the case of *Hillary* v. *Waller*.

This decision has been much canvassed in the profession, and has, in general, been disapproved; but the objection to it seems to arise rather from the construction adopted by Lord *Erskine* of the deeds in question, or the application of the doctrine of presumption to that particular case, than to the general principles upon which his Lordship founded his decision. For, supposing his Lordship to be right in his construction, the case, it is conceived, presents as strong a ground for the presumption of a conveyance, as could well be furnished, namely, a defined purpose completely satisfied nearly a century ago, (A. and I. died in 1695), and an uninterrupted enjoyment ever since, consistent with the title in favour of which the presumption was made, and no recognition of the outstanding estate in the trustees appearing to have been made since the year 1737. The Lord Chancellor's construction of the deed, however, is certainly attended with some difficulty. To confine the indemnity as to the *entire* estate to the period of eleven years after the death of A. and I., by implication from the direction to convey a *moiety* at that period, seems scarcely consistent with the general purpose declared by the concluding clause, that the estate was conveyed as a collateral security for G. and K.'s title; for the danger of eviction would not, for any apparent reason, have ceased at that time, and the clause seemed as if intended to be explanatory of the purpose for which the other moiety was to be conveyed (*x*). But whether the circumstances occurring in *Hillary* v. *Waller* justified the presumption or not, the general doctrine on which it was professedly decided has been confirmed in several subsequent instances.

Surrender presumed of term for raising portions which became due sixty years ago.

Thus, in *Emery* v. *Growcock*, 6 Madd. 54, where the question was, whether a term created for raising portions for daughters, by a settlement of the 12th March, 1711, could be presumed to be surrendered. The term was declared to cease in the event of the trusts never arising, but not in the event of their becoming satisfied.

(*x*) [If the meaning of the obscure clause in question was, as suggested, *ante*, p. 445, n., to declare the trusts upon which the trustees were to hold the estate upon either of the contingencies—firstly, of the eviction against which the indemnity was provided never happening, or, secondly, of the purchaser's not insisting on the indemnity, notwithstanding eviction,—there will be an additional reason in favour of Lord *Erskine's* construction.]

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There were several daughters, in whose favour the term for creating the portions was raised, but no evidence was adduced of their being satisfied. A settlement of the estate was made in 1744, and a recovery suffered; and Lord Gower, the then tenant for life of the estate, and one of the settlors, covenanted that the estate was free from incumbrances. No assignment or disposition appeared to have been made at any period of the term. The Master had required the term to be assigned to a trustee for the purchaser. Sir *J. Leach*, V. C.—"In this case the question on a matter of title is, whether the surrender of a term created for portions is to be presumed. There is no evidence of the portions paid, but the parties entitled attained their ages of twenty-one years about sixty years since, and are all dead; and it appears by the abstract, that the family has long dealt with the estate as if there were no term, and no portion due." And, after some general observations, his Honor proceeded—"The only rule that courts of equity can adopt in cases of presumption like the present, seems to be, that *if the case be such, that, sitting before a jury, it would be the duty of a judge to give a clear direction in favour of the fact, then it is to be considered as without reasonable doubt; but, if it would be the duty of a judge to leave it with the jury to pronounce upon the effect of the evidence, then it is to be considered as too doubtful to conclude a purchaser.* There is here, first, a clear presumption that the purpose is satisfied; next, there is a presumption that the necessary term was surrendered, because it is not subsequently noticed in the transactions of the family. And lastly, there is the absence of all evidence that this term was ever applied to any new purpose. In this case I should consider it my duty to give a clear direction to the jury, that they were bound to find the term surrendered. And, I must therefore hold, that there is no sufficient doubt to entitle the purchaser to be relieved from his contract."

Surrender of mortgage term presumed on evidence of payment long since.

Where an estate is suffered to remain outstanding in a mortgagee, after payment of the debt, a reconveyance will, in process of time, be presumed. Of this nature was the case of *Ex parte Holman*, (24th July, 1821, 1 Sugd. Vend., 9th ed., 509), where it appeared, by the abstract of title delivered to a purchaser, that, by indenture dated 24th December, 1735, Baker demised the lands in question to Marsh for 500 years, subject to redemption on payment of £205 and interest, on a certain day; the money was not paid on the day, but was paid to the executor of Marsh on the 6th October, 1750, as appeared by a receipt indorsed on the indenture, but no assignment or surrender was ever executed; and therefore the pur-

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chaser insisted that the sellers should, at their own expense, discover the personal representatives of Marsh, and procure an assignment of the term to be made to a trustee for him, to attend the inheritance. In an intermediate deed, dated in July, 1749, the term was noticed, but in no other deed was it mentioned; and there were three conveyances of the fee upon sales, one in 1784, another in 1791, and the other in 1792. Sir *J. Leach*, V. C., was of opinion, in opposition to the Master, to whom the title was referred, that a surrender of the term must be presumed.

Reconveyance of estate in mortgage, and payment of debt presumed.

So, in the case of *Cooke* v. *Soltau*, 2 Sim. & Stu. 154, where the circumstances were these: In 1745, A., who was a surviving trustee under a will, with the concurrence of B. (the tenant for life), mortgaged certain houses in fee to C. for £300, subject to redemption on payment of that sum and interest in 1746. There was no positive evidence of the repayment of this money, or the reconveyance of the estate; but, in 1791, I. C., the devisee in fee under the will before mentioned, describing himself to be seised in fee free from incumbrances, mortgaged the property by demise for 1,000 years to W. In 1807, the estate descended from I. C. to his son, the plaintiff, who, in 1815, paid off W.'s mortgage, when the term was assigned for securing an annuity. In 1818, the plaintiff obtained a reconveyance of the legal estate from the heir-at-law of A., in whom it was considered to be outstanding. It appeared, by the affidavits of the plaintiff and his brother, that no demand for principal or interest had ever been made on their late father, with whose affairs they were acquainted for twenty years before his decease; and there was a note in an abstract of 1791, made on the occasion of W.'s loan, that the £300 had been paid off for upwards of forty years; and the conveyancer who perused the title expressed himself satisfied, notwithstanding the want of a reconveyance. The title having been objected to by the defendant (a purchaser), on the ground that the legal estate was outstanding in the representatives of C., Sir *J. Leach*, V. C., overruled the objection, in a rather laconic judgment. "I adhere," said his Honor, "to the principle of *Emery* v. *Growcock*. No reconveyance could ever be presumed unless it could be properly presumed in this case."

Case of *Noel* v. *Bewley*.

[In the case of *Noel* v. *Bewley*, 3 Sim. 103, the reconveyance of the legal estate in fee-simple was presumed, where the effect of such presumption was to hold that a contingent remainder had been destroyed by a conveyance executed by the tenant for life. The case is stated upon a different point, *post*, Vol. 8, p. 309, 2nd ed.: the facts, so far as they are material to the point under consideration,

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are thus stated in the Vice-Chancellor's judgment:—"It appears that, in the year 1711, a mortgage term became vested in J. Askew; and, in 1712, a mortgage in fee was made to a person of the name of Shiers; and, in June of the same year, Shiers declared that the money secured by the mortgage so made to him was the money of Askew, and that his name was only made use of in trust for Askew, and that he would do all such acts as should be required by Askew for further assigning the trust. Then, in 1714, previous to Askew's purchasing the equity of redemption in fee, the term is assigned to Casson in trust for Askew, and to attend the inheritance; and shortly afterwards, the equity of redemption is conveyed to Askew, so that there was no further benefit to arise to the owner of the inheritance from keeping the legal estate outstanding. It appears by the recital in the lease of 1717, [a lease granted by J. Askew], that there had been a lease previously made by the person who was the owner of the estate prior to the conveyance to Askew, and that some doubt had arisen in the mind of the lessee, whether the lease was a good one; and then it is recited, that Askew being the owner of the reversion and inheritance expectant on the determination of the lease, had agreed to confirm it; and, accordingly, he uses general terms of confirmation and grant for the purpose of setting up that prior lease for 99 years. That was a clear act of dominion, and of such a nature as that it could not answer the object of the lessee unless it passed the legal estate; and therefore it seems to me to afford a strong reason for presuming that the legal estate was not outstanding. Then there were subsequent leases granted, not merely from year to year, but for long periods of time; and it is fair to infer that those leases were intended to comprise that which upon the face of them they appear to pass. And if anything is to be deduced from the terms used in the deed of 1802 (*y*), it appears to me that that deed does of itself afford a strong inference that the legal estate was not outstanding, because it commences with a recital that Ferdinando Askew, by his will, which was duly executed, gave and devised unto and to the use of Mary Askew, &c. The intention of the grantor to convey the contingent remainder is next recited; and that remainder is then conveyed unto and to the use of the trustee, his heirs and assigns. The parties, therefore, acted on the supposition that Ferdinando Askew had the legal estate, he

(*y*) [Ferdinando Askew, the devisee and heir of J. Askew, had devised the estate to his wife, with remainder to his daughter, Mary Blunt, for life, with a contingent remainder to her son, C. B. Blunt, in fee, who conveyed his contingent remainder by the deed of 1802.]

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having devised it to uses, and that the legal estate in the contingent remainder was capable of being limited to the use of a trustee. It appears to me, therefore, that there is sufficient in this case to authorize me to presume that the legal estate was not outstanding, so as to make this a legal contingent remainder."]

At what period presumption of reconveyances arises.

Twenty years, by analogy to the period prescribed for an ejectment, and the general rules respecting presumptions, seem to be naturally pointed out as the period at which the presumption of a reconveyance arises. At no shorter time can it be relied on, where at least the presumption is founded solely on the same length of time since the recognition of the estate in question, unaided by any positive acts of the parties accelerating such presumption; and even where the full period of twenty years has elapsed, great hesitation exists among conveyancers, in admitting the presumption of a conveyance unaided by circumstances affording a reasonable ground to infer the fact. In some instances, indeed, and for particular purposes, estates have been presumed to be conveyed in a much shorter time than twenty years, as in *England* v. *Slade*, 4 D. & E. 682, where lands having been devised to trustees in trust to convey them to P., on his attaining twenty-one, and an ejectment being brought by P., the court thought that a conveyance from the trustees might be presumed, *though four years only had elapsed* since P.'s majority. See also *Doe* d. *Bowerman* v. *Syburn*, 7 D. & E. 2. But cases of this kind must be regarded as *sui generis*. They originated in the disinclination of the courts to permit the course of substantial justice to be defeated by a merely technical objection, and may be considered as reviving, in a somewhat different and less exceptionable form, Lord *Mansfield's* favourite doctrine in *Lade* v. *Holford*, Bull. N. P. 110, that a third person should not defeat an ejectment by setting up an estate outstanding in the lessor-of-the-plaintiff's own trustee, or, in other words, allowing a *cestui que trust* to recover in ejectment on his equitable title. The cases clearly are not authorities on the general question as to when an estate can be presumed to be conveyed; for it seems to be decided that twenty years is the *minimum* of time at which such presumption can be sustained. This was very distinctly ruled in the case of *Doe* d. *Brandon* v. *Calvert*, 5 Taunt. 170; where, in 1798, A. by feoffment, for a pecuniary consideration, conveyed to B. and C. in fee. B. survived C., and conveyed to the lessors of the plaintiff. The defendants (who were devisees of C.) set up a mortgage for a term of years, created in 1794 by T. (of whom A. had purchased) to D., but how

Presumption of conveyance not made in shorter time than twenty years.

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it came into their possession did not appear; and they could not prove payment of interest under it. The counsel for the plaintiff urged, that, as there was no proof that interest had of late years been paid on this mortgage, it might be presumed to be surrendered; and of this opinion was Mr. Baron *Graham*, who tried the cause, and under whose direction the jury found a verdict for the plaintiff. But the Court of Common Pleas granted a new trial. *Mansfield*, C. J., said, "There is no circumstance here to lead to the supposition that the deed was surrendered, except the eighteen years' time; if the deed had been assigned or surrendered, the instrument whereby it had been assigned or surrendered ought to be in the possession of the plaintiff. No reason is assigned to account why it should not be there. The question is, therefore, whether from the circumstance of the eighteen years only, a surrender can be presumed. *I have never known a case in which a shorter time than twenty years has been held sufficient to ground a presumption of the surrender*, and that is often too short a time; for many times receipts and documents may be lost. But it is enough to say that twenty years is the time prescribed by act of Parliament as a bar to an ejectment, by analogy to which the doctrine of presumption has gone."

Doctrine of presumption as applied to trust estates created without any specification of purpose.

In most of the preceding cases it will be perceived, that the estate, which was the subject of the presumption, was created for a specific and clearly defined purpose; and in these the application of the principle under consideration is much less open to controversy than where the purpose is to be collected by inference and implication only from the general context of the instrument; in which case it is often difficult to pronounce with certainty, when, according to the true construction of the deed limiting the estate, the object of its creation was answered.

Reconveyance presumed, though the object of the trust was not expressly limited and defined.

A case of this kind is *Doe* d. *Howell* v. *Lloyd*, stated in Peake's Law of Evidence, 5th edit. App. 41, where both the lessor of the plaintiff and the defendant claimed under T., who purchased the property in dispute about seventy years before. The conveyance was made to the use of T. and one D. and their heirs, but, as to the estate of D., in trust for T. (*z*); D. survived the purchaser. For the defendant it was contended, that the plaintiff must be nonsuited, as it did not appear that he possessed the legal estate; but *Lawrence*, J., before whom the cause was tried, told the jury that the convey-

(*z*) See an observation upon this mode of excluding dower, *ante*, Vol. 4, p. 284, 2nd ed.

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ance could only be taken in this form, for the purpose of preventing T.'s wife from claiming dower; that such purpose had long since been completely fulfilled; and therefore they might presume that D., or his heir, had conveyed his legal interest to T. after the death of the wife, (which event, it was proved, had happened in his lifetime), or to some of his descendants since. Under this direction the jury presumed a conveyance, and found a verdict for the plaintiff. On an application by the defendant to enter a nonsuit, on the ground of there being no evidence to presume a conveyance, the court refused even a rule to shew cause. See some observations upon this case, Mathews on Presumptions, 217—a treatise of considerable merit.

Remarks upon the case of *Doe* v. *Lloyd*.

As the jury were directed to find in favour of the presumption in the case just stated, it would follow, according to Sir *J. Leach's* doctrine in *Emery* v. *Growcock*, that the presumption would have been made even against a purchaser. Assuming that the sole object of T. in taking the conveyance to himself and a trustee jointly was the exclusion of the dower of his *then* wife, the purpose of course became satisfied at her death; but this is not by any means a necessary conclusion. The purchaser, in thus limiting the estate, might reasonably mean to exclude the dower of any *future* wife; this purpose, indeed, would only prolong the trust to the end of his own life; but he might also intend, that, in case he died in the lifetime of the trustee, the equitable inheritance should go to his representatives separated from the legal ownership, which, considering the advantages attending equitable interests, not only in regard to their exemption from dower, but from their being alienable to a purchaser free from judgments, &c., would not be an improbable or irrational intention; though, undoubtedly, a better mode of effecting this would have been to vest the entire fee in the trustee solely, instead of giving him a joint estate, which is subject to the contingency of survivorship. The case is one of much practical importance, on account of the frequent occurrence in titles of estates having been left outstanding under limitations of this nature, those limitations having been at one period ordinarily adopted on the conveyance of lands to a purchaser, in order to exclude dower, but have been completely superseded by the more convenient and effectual mode of limitation now in common use. We see in this instance the readiness of the courts to lay hold of even equivocal circumstances, in order to give deeds such a construction as will let in the presumption. But all reasoning founded on an assumed

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purpose in the author of the trust seems to be excluded in the case of a simple conveyance to A. in trust for B., particularly where the owner himself severs the equitable from the legal title, which were before united in him, or, in other words, where a person seised in fee conveys to another in trust for himself. This is the strongest case that can be suggested against the presumption in question; for the person seised having, by a positive act, divested himself of the legal estate, without any avowed object in doing so, it may be inferred that he intended the legal and equitable titles to remain distinct; and therefore it is impossible to say, that his purpose is ever accomplished. The actual possession or enjoyment by the *cestui que trust* raises no presumption adverse to the existing trust in such a case, as the permission of such possession or enjoyment would be the due execution of the trust on the part of the trustee.

Case of *Coodright* d. *Grosvenor* v. *Swymmer*.

A case decided by the Court of King's Bench in the time of Lord *Kenyon*, seems to furnish an important authority on this point. On a trial at bar in ejectment for the recovery of a lead mine, the lessor of the plaintiff, to prove his title, produced a grant from the Crown, and a conveyance from the grantees of the Crown to G. and B., together with a deed of declaration of trust executed by G. and B., declaring that the conveyance to them was in trust for Sir Richard Grosvenor's ancestor, and they also covenanted to convey the legal estate to him. This deed was above 120 years old. The Grosvenor family had been in the uninterrupted possession of the property ever since. The defendants objected that the legal estate was still outstanding in the heir of the surviving trustee; to which it was answered, that, there having been a covenant to convey so long ago, and possession having gone according to the covenant ever since, the court would presume a conveyance at that distance of time. *Sed, per Curiam*—"The objection is fatal, and, if insisted upon, it will defeat this ejectment; for, by the deed the plaintiff has produced, the legal estate appears to be in a third person, and nothing but a legal estate can be recovered by ejectment. Twenty years' possession, it is true, if nothing more had appeared, would have been a sufficient title; but then it must be a possession of a legal estate under a supposed right to it. The possession here has been equitable only under an equitable right. The possession legally has been all along in the trustees, in whom the legal estate remains, and to whom the *cestui que trust* is no more than a tenant at will. And, apparent as it is

Conveyance by trustee not presumed on mere length of enjoyment by *cestui que trust*, when consistent with the trust.

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that the beneficial interest belongs to Sir Richard Grosvenor, the heir of the trustee may yet maintain an ejectment, and take the possession from him. If the possession had been enjoyed pursuant to the conveyance covenanted to be made so long ago, and the possessor could have derived no right but under that conveyance, there would have been some reason for presuming such a conveyance had been made, and lost; but here the possession is otherwise accounted for, without such a presumption, it having gone on and continued in the same channel it would have done without such a conveyance, *i. e.* in the *cestui que trust*, and the persons entitled independent of such a conveyance to the beneficial interest." (*Goodright* d. *Sir R. Grosvenor* v. *Swymmer*, 1 Hanmer's Rep. temp. Lord *Kenyon*, 385).

Remarks upon *Goodright* d. *Grosvenor* v. *Swymmer*.

In this case, it will be observed, there was not only a declaration of trust, but a covenant to convey; and the court refused, notwithstanding the great lapse of time, to presume that such a conveyance had been made on the mere length of enjoyment, *as such enjoyment was consistent with the trust.* It does not appear, that during all this time, any conveyances, by way of settlement or otherwise, had been executed by the Grosvenor family, though the fact is highly probable.

As to the presumed surrender of terms of years assigned to attend the inheritance.

The case to which our attention has just been directed, conducts, by an easy transition, to the consideration of the much debated question, whether, under any and what circumstances, the doctrine of presumption applies to the surrender of a term which has been expressly assigned to attend the inheritance. All the arguments that could be urged against the presumption in the Grosvenor case apply with increased force to this. The mere enjoyment by the owner of the inheritance, for whose benefit the term is expressly made attendant, being accordant with the trust, can raise no inference inimical to the continuance of the term; and, until a recent period, it was considered that an alienation of the land, without noticing the term, was equally inoperative to this end. The trust was expressly and anxiously framed, so as to give it endurance independently of all acts and dealings of the parties. It was devoted to a never-failing, never-satisfied purpose; for, so long as there was an inheritance to attend upon, so long had the trust an object, and no modification of the inheritance interfered at all with its office or utility. Under this impression, conveyancers were in the habit of assigning terms which had long lain dormant and unnoticed, and which were confidently relied upon as a protection against dower, judgments, &c., but that confidence must now be considerably

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weakened by recent determinations, which have proceeded upon the principle, that, *where the inheritance is aliened by the persons entitled to the benefit of the term, without assigning or taking notice of the term, this affords a ground for presuming it to have been surrendered.* This doctrine was first broached in the case of *Doe* d. *Burdett* v. *Wrighte*, 2 Barn. & Ald. 710, which was as follows :—

Case of *Doe* d. *Burdett* v. *Wrighte.*

In 1735, two mortgage terms of 1000 years (the mortgage being then paid off) were assigned to a trustee in trust to secure an annuity to M. and N., "and afterwards to attend the inheritance." N., the surviving annuitant, died in 1741, and the estate remained undisturbed in the hands of the successive owners of it, (that is, of Mrs. Oglethorpe, who died in 1787, and of Sharpe, a devisee for life under her will), from that time until 1813. No notice in the meantime was taken of the term, except that, in 1801, on a sale of part of the property under the authority of the land-tax redemption acts, Sharpe, the devisee for life, in whose possession the deeds creating and assigning the terms then were, covenanted for the production of those deeds to the purchaser. Sharpe dying in 1813, a person who claimed to be heir of the testatrix, entered and remained in possession for about six years, when the real heir (the lessor of the plaintiff) appearing, brought his ejectment. For the defendant, it was insisted, that the legal estate was outstanding in the representatives of the trustee of the deed of 1735, and that the plaintiff, therefore, could not recover. But, under the direction of Mr. Justice *Park*, who thought that the circumstance of that instrument not being found in the hands of the trustee, but in those of the beneficial owners, whose occupation had so long continued "unfettered by any such clog," was sufficient to warrant a presumption of the surrender of the terms—the jury found a verdict for the plaintiff. A motion was afterwards made for a new trial, on the ground of a mis-direction by the Judge; but a rule for that purpose was refused after argument.

Surrender of term assigned to attend the inheritance presumed.

Mr. Justice *Bayley* said: "The question is, whether the learned Judge was wrong in directing the jury to presume the surrender of the outstanding terms. I think, that, in this case, even if he had used the strongest terms of recommendation and advice, he would have been right. The facts are these: The terms were created by indentures dated October 1st, 1717. In 1735 they were assigned for the purpose, first, of securing the payment of an annuity to the father and mother of Mrs. Oglethorpe, and after their death to attend the inheritance. Mrs. Oglethorpe's mother, the

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survivor, died in 1741, and she herself made her will in 1786. Now, I cannot see any sufficient reason for continuing the terms during all that period; for, from the time of the death of the annuitants, the object ceased; and, in point of fact, from 1741 till the present time, with one exception only, nothing is even heard of them. The principle upon which the courts proceed in these cases is, that they will presume a surrender, where it is for the interest of the owner of the inheritance that the terms should be considered as surrendered; and where an estate has continued for so long a period in the same hands, there seems no beneficial purpose which can be answered by the continuance of the terms. If, for instance, in 1786, these terms had been considered as subsisting, it would have been necessary for Mrs. Oglethorpe to have made inquiry, and to have found out the personal representative of the trustee, after a lapse of fifty-one years, and perhaps at the expense of a limited administration. I, therefore, can see no benefit, but on the contrary, a great inconvenience to the owner of the inheritance, from keeping the terms alive. It is true, that, in 1802, Sharpe covenants for the production of the deed of 1735: he does not, however, assign the terms, but only says, 'I find this deed in my possession, and I covenant to produce it.' He treats the terms, therefore, as subsisting in parchment, but says nothing as to whether they are then subsisting in interest or not. The case of *Doe* v. *Scott*, [11 East, 478], is very different from this: there the term had been dealt with as subsisting, and it would, besides, have been prejudicial to the owner of the inheritance, if a surrender had been presumed. I think, therefore, that the learned Judge was quite right in his directions to the jury upon this point."

Remarks upon the case of *Doe* d. *Burdett* v. *Wrighte*.

This was an extremely strong case, since there had been no dealing with the fee from 1735, when the term had been assigned to attend, until it was attempted to be used in the present action, except in 1801, when the existence of the term was expressly recognised by the covenant for the production of the deeds relating to it. It must be remembered, however, that this attempt was made, by a person having no interest in the property, to defeat an ejectment by the real owner; and the length which the courts have gone in order to prevent this, has already been the subject of observation. It is not necessarily to be inferred, that, if the question had been (as in the next case), between a judgment-creditor and a *bonâ fide* purchaser setting up the term as a protection against the judg-

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ment, *i. e.* using it for the very purpose for which it had been kept on foot, the court would, under such circumstances, have presumed a surrender. Indeed the reasoning upon which they founded their judgment necessarily leads to a conclusion the other way.

Case of *Doe* d. *Putland* v. *Hilder*.

Question between judgment-creditor and purchaser, as to the presumed surrender of a term assigned to attend the inheritance.

The case just referred to is *Doe* d. *Putland* v. *Hilder*, 2 Barn. & Ald. 782 ; *S. C.*, 1 Sugd. Vend. 492, 9th ed., where the term in question had been assigned under the following circumstances: In 1762, the term was created by Naylor, the owner of the fee, who demised the property for 1000 years by way of mortgage, and several other charges were made previously to and in the year 1770. In 1771, Naylor devised the estate to trustees to sell. In 1779, they sold and conveyed to John Newman in fee ; when the term in consideration of the payment of the mortgage-money was assigned by a separate deed, (7th Oct. 1779), to Mr. Denman, his executors, administrators, and assigns, "In trust for Newman, his heirs and assigns, and to be assigned &c., as he or they should direct, and in the meantime to attend the inheritance," in the usual way. In October, 1790, John Newman died intestate, leaving Richard, his brother, his heir. In November, 1797, Richard died, leaving Richard, his son, his heir, then a minor. On 23rd August, 1808, the last named Richard gave a warrant of attorney to the lessor of the plaintiff to enter up judgment for £4,000, which was immediately done. In 1810, Denman, the trustee of the term, died intestate, leaving John Denman his son and next of kin. In October, 1814, Richard Newman, on his marriage, settled the estate to the use of himself for life, with remainder over in strict settlement. In June, 1816, he sold and conveyed his life estate to his mother, and she devised the estate to the persons under whom the defendant claimed as tenant. In 1817, the lessor of the plaintiff issued an *elegit*, and afterwards brought the present ejectment. After the commencement of the ejectment, John Denman took out letters of administration to his father, and by deed dated 19th March, 1819, he, by the direction of the devisees of the purchaser, (the mother), in the usual way, assigned the term to John Newman, a trustee for them, and to attend the inheritance. *The deed creating the term was produced by the purchaser of the largest part in value of the estate comprised in it. The deed assigning the term to attend, on the purchase by Mr. Newman, in* 1779, *and the last deed of assignment, were produced by the defendants.* The cause was tried before Mr. Justice *Park*, who thought that the question, as to a surrender, ought to go to a jury. The learned Judge told them, that it seemed to him, that, as a trustee was appointed forty

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years ago, and had never done any act, but that the party who was beneficially interested had always acted on the property, he (the learned Judge) could not consider an administration taken out but a week before the assignment as at all effective; that he considered to be done merely for the purpose of setting up this old term to defeat the plaintiff; and under such circumstances, he should leave it to them to presume it had been surrendered; which, according to the learned Judge's report, the jury expressly said they did. The Court of King's Bench, after a long argument, confirmed the learned Judge's direction.

Judgment of Lord Chief Justice *Abbott*.

Lord Chief Justice *Abbott*, after fully stating the case, and adverting to some points occurring in it not material for the present purpose, proceeded as follows:—

"We are of opinion, that in this case the surrender of the term might lawfully and reasonably be presumed. It is obvious, that, if such a surrender had been made, it would not probably be in the power of the plaintiff to produce it, he being a stranger to the particulars of the title which his debtor had in the land. The principal ground of objection to the presumption was, that such a presumption had in no instance hitherto been made against the owner of the inheritance, the former instances being (as it was said) all cases of presumption in favour of such owner. But this proposition appears to be too extensively laid down. One of the instances in which it has been said that a surrender shall be presumed, is the case of a mortgagor setting up a term against his own mortgagee; and this is said generally, and without distinction, between a mortgagee in fee or for years. But if such a term be set up against a mortgagee for years, and a surrender presumed, the presumption is made against, and not in favour of, the owner of the inheritance. It is made against his interest at the time of the trial, but in favour of his honesty at the time of the mortgage; for if the term existed at the time of the mortgage, he ought in honesty to have secured the benefit of it to the mortgagee at that time, and not to have reserved it in his own power as an instrument to defeat his mortgage; and upon the same principle, on which a surrender is presumed in the case of mortgagor and mortgagee, we think it may reasonably be presumed in the present case; though the principle is applicable not to the judgment-creditor, but to other persons. One of the general grounds of a presumption is, the existence of a state of things which may most reasonably be accounted for by supposing the matter presumed. Thus, the long enjoyment of a right of way by A. to his house or close over the land of B., which is a pre-

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judice to the land, may most reasonably be accounted for by supposing a grant of such right by the owner of the land; and if such a right appear to have existed in ancient times, a long forbearance to exercise it, which must be inconvenient and prejudicial to the owner of the house or close, may most reasonably be accounted for by supposing a release of the right. In the first class of cases, therefore, a grant of the right, and, in the latter, a release of it, is presumed. Where a term of years becomes attendant upon the reversion and inheritance, either by operation of law or by special declaration upon the extinction of the objects for which it was created, the enjoyment of the land by the owner of the reversion, thus become the *cestui que trust* of the term, may be accounted for by the union of the two characters of *cestui que trust* and inheritor, and without supposing any surrender of the term; and therefore, in general, such enjoyment, though it may be of a very long continuance, may possibly furnish no ground to presume a surrender of the term (*b*). But where acts are done or omitted by the owner of the inheritance, and persons dealing with him as to the land, which ought not reasonably to be done or omitted if the term existed in the hands of a trustee, and if there do not appear to be anything that should prevent a surrender from having been made; in such cases the things done or omitted may most reasonably be accounted for by supposing a surrender of the term: and, therefore, a surrender may be presumed. We think there are such things in the present case. In the year 1814, Richard Newman, the debtor, and then owner of the inheritance, made a settlement upon his intended marriage, which took place immediately. Upon such an occasion, the title and title-deeds of the husband would probably be looked into by professional men on the part of the husband at least, if not on the part of the wife also; and notwithstanding the assertion of one of the learned gentlemen who argued this case on the part of the defendant, and by whom we were informed that it is not usual on such occasions to take any notice of an outstanding satisfied term, we cannot forbear thinking that such a term always ought to be, and frequently is, in some way noticed, either by the deed of settlement or some separate instrument; because, if it be not noticed, and the

Surrender held to be presumed on the ground of the omission to notice the term on the conveyance of the inheritance.

(*b*) Though, it will be observed, that in *Doe* v. *Wrighte*, *ante*, p. 457, Mr. Justice *Bayley* seemed to think that mere length of enjoyment alone would be a ground for presuming a surrender; but the learned Judge's observation must be taken *secundum subjectam materiam*, *i. e.* as applicable only to the case before him, the doctrine of which, for the reason already suggested, does not apply to the present case.

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termor be not called upon to assign the term to the uses of the settlement, nor any declaration of trust made of it to those uses, it may afterwards be made an instrument of defeating the settlement (*c*). The title-deeds usually remain with the husband, and if he be driven by necessity to borrow money, he may meet with a lender who has no notice of the settlements, and, by handing over his deeds, and obtaining an assignment of the term to him and other conveyances, give to him a title that must prevail both at law and in courts of equity against the settlement. The supposed practice of taking no notice of outstanding terms on such an occasion appears to have been insisted upon before Lord *Hardwicke* in the case of *Willoughby* v. *Willoughby*, as applied to marriage settlements and purchases. But that very learned Judge, in giving his judgment in that case, says, he had inquired of a very learned and eminent conveyancer, and could not find that there had been any such general rule; and he afterwards proceeds to say—'Where the assignment has been generally in trust to attend the inheritance, and the parties approve of the old trustees, they may safely rely upon it, especially in the case of a purchase or mortgage, where the title-deeds always are, or ought to be, taken in; for if he has the creation and assignment of the term in his own hands, no use can be made of it against him.' Such instances as these may account for the practice in many cases, but cannot constitute a general rule. If, in the present case, it had appeared that the deeds relating to the term were delivered to the trustees of the marriage settlement as one of the securities for the settlement, the case would have stood on a very different ground. The marriage settlement, however, is not the only occasion on which we think it may most reasonably be supposed that this term, if existing, would have been brought forward. It appears that, in 1816, the same Richard Newman, being then indebted to his mother, and desirous of giving her security for the debt, prevailed upon his wife to join with him in conveying to her the interest they derived under the settlement. Upon this occasion an assignment of the term, or a delivery of the deeds relating to it, would undoubtedly have been most important acts in favour of the mortgagee, because they would have protected the mortgagee against any subsequent use of the term to defeat her mortgage. On both these occasions, therefore, the term, if existing, could not have been wholly disregarded without either want of integrity on the part

(*c*) But now see *Doe* d. *Blacknell* v. *Plowman*, 2 Barn. & Ad. 573, *post*, p. 467.

of Richard Newman, or want of care and caution on the part of the professional men engaged in those transactions. We think it more reasonable to presume a prior surrender of the term, than to presume such deficiencies. It certainly might not unreasonably be left to a jury to consider to what cause they would attribute these omissions; and this was done at the trial. It is true, that an assignment of the term was taken a few days before the trial, for the alleged benefit of the legatees of the mortgagee, Mrs. Newman, on whose behalf, we were informed, the present cause was defended. But this tardy act cannot be of any avail, and leads not to any presumption. The assignment was made by the administrator of the person in whom the term had been vested, and the administrator would probably be ignorant of any previous surrender made by the intestate. The time for dealing with the term on behalf of the mortgagee was the date of the mortgage. An actual assignment of the term is more regarded than its mere quiescent existence. It will defeat the title to dower, which its existence only will not, according to the case of *Maundrell* v. *Maundrell*, 7 Ves. 567, and 10 Ves. 642, and the cases there cited. These observations respecting the settlement and the mortgage receive additional force from the consideration of their dates. They were both long subsequent to the judgment, and they are the acts of a person materially interested in protecting the land from the judgment, and excluding all questions on the subject of priority, or otherwise, in the case of the settlement, for the sake of his intended wife, and the issue that he might expect by her; and in case of the mortgage, for the ease of the mortgagee, to whom he was so nearly related, and who also was evidently a favoured creditor. And it cannot be denied that an actual assignment of the term would have been in many respects more operative against the judgment than its mere existence. In the case of the mortgage, it would have put an end to all question upon the Statute of Frauds (*d*), by making the termor specifically a trustee for the mortgagee before execution issued, according to the case of *Hunt* v. *Coles*, 1 Com. Rep. 226. For these reasons, we think the verdict ought not to be disturbed, and the rule must, therefore, be discharged."

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The error into which the Lord Chief Justice fell in considering that attendant terms of years are commonly assigned upon the settlement of estates on marriage, will be obvious to all who are ac-

Remarks upon the case of *Doe* v. *Hilder*, and its practical effects.

(*d*) A point on which the opinion entertained by the court on the question of presumption rendered it unnecessary to decide.

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quainted with the practice of conveyancing. Such a step is never taken; but this error, though it has been much commented upon, and though certainly important so far as respected the application of the doctrine in question to the particular case before the court, is comparatively of little moment as affecting the general principle. The great question in the latter point of view is, whether, assuming that the term ought to have been assigned or taken notice of, the court was right in saying that the omission to do so formed a valid ground for presuming a surrender. Upon this point, the opinions and the continued practice of conveyancers are at direct variance with the adjudication, which has been the subject of many condemnatory strictures. One of its earliest and warmest opponents was Sir Edward Sugden, who, in a published letter to Mr. Butler, and in the subsequent editions of his Treatise on Vendors and Purchasers, (see 9th ed. p. 470), exposed with much force and clearness the fallacy of the reasoning of the learned Judges, and the mischievous consequences of which the decision was likely to be productive, in weakening the security of purchasers. Lord *Eldon* has often and pointedly expressed his disapprobation of the case, and has recommended conveyancers to pay no attention to the doctrine. In one case his Lordship, speaking of a term of years which had been assigned to attend the inheritance, said—"I do not inquire whether there may have been intermediate transactions since the creation of the term, which might induce some people to think a surrender of it should be presumed, further than to remark, that, having, in days, which, perhaps, may be thought days of yore, passed about two years, by no means unprofitably, in the office of Mr. Duane, and during which I had frequent opportunities of knowing the opinions entertained by Mr. Booth, Mr. Fearne, and other eminent conveyancers of that day, I well knew that they were in the habit of proceeding on notions relative to satisfied terms, *which, notwithstanding some modern decisions, I would not advise conveyancers to depart from.*" See *Marquess of Townsend* v. *Bishop of Norwich*, 27th January, 1820, (Sugd. Vend. 9th ed. 505). And on another occasion, his Lordship, in allusion to *Doe* v. *Hilder*, said—"I think it right to declare that I do not concur in the doctrine laid down in that case." (*Aspinall* v. *Kempson*, 5th December, 1821; Sugd. Vend. 508, where other *dicta* of Lord *Eldon* are collected; to which may be added his Lordship's observations in *Mole* v. *Smith*, Jacob, 496). The opinions of Sir *T. Plumer* (2 Jac. & W. 158), and of several of the Barons of the Exchequer, have been expressed to a similar effect; and the practice

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of the Masters in Chancery accords with these opinions; and though Sir *J. Leach* has, we have seen, on two occasions, (*vide ante*, p. 448) presumed surrenders of terms as between vendor and purchaser, it will be observed that neither of these terms had been assigned to attend the inheritance; and therefore his decisions do not touch the point. It is not surprising, that, in this state of the authorities, conveyancers have continued to require terms of years to be assigned, regardless of the fact whether the inheritance has been dealt with in such a manner as, according to the doctrine in question, would lead to the presumption of a surrender. The Court of King's Bench, however, has evinced no disposition to retract, as clearly appears by the case of *Bartlett* v. *Downes*, 5 Dowl. & Ryl. 526; 1 Car. & P. 522; 3 Barn. & Cr. 616, noticed, *post*, p. 468; so that the matter stands thus: Conveyancers treat the term as a subsisting interest, and require it to be assigned; if the vendor refuses, on the ground of the *Doe* v. *Hilder* doctrine, and a bill is filed against him by the purchaser, he is compelled by a court of equity, disregarding that doctrine, to assign it; though, if the purchaser attempts to use the term thus obtained in a court of law, (where alone it can be used as a protection), it is treated as a nonentity. In short, the term exists only for the purpose of putting the vendor to the expense of getting it in; for every beneficial purpose in the hands of the purchaser it is extinct; yet, as an assignment may be required of him, when he sells, he cannot be advised to leave it outstanding. In one instance, however, a purchaser was compelled even in equity to accept a title, the validity of which depended on the doctrine in question. This occurred in the case of *Townsend* v. *Champernown*, 1 You. & Jer. 538, where Lord Chief Baron *Alexander* overruled an exception made by a purchaser to the Master's report in favour of the title, because, in a deed of 1758, a term of 1,000 years was recited to have been created at an antecedent period, and assigned to attend the inheritance; but neither the deed creating, nor the deed assigning the terms, was produced: his Lordship observing—"Until a different decision be pronounced, I shall, upon the authority of *Doe* v. *Hilder*, after the expiration of 70 years *without payment of interest* (*e*), presume the term to be surrendered."

Effect of the modern decisions.

It will be observed, that, in applying the doctrine of the case of *Doe* v. *Hilder*, it would not only be necessary to direct our atten-

(*e*) The learned Chief Baron appears to have forgotten that the term was referred to as a satisfied term expressly attendant on the inheritance.

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tion to the *existing* state of facts in regard to a particular term, but to the circumstances attending it at every antecedent period of its history; for if, in tracing the title to the term, it should appear that at any point of time intervening between two mesne assignments, the inheritance had been aliened without noticing it, the term must be considered as extinct, notwithstanding the subsequent acts of the parties treating it as a subsisting interest. Though this may seem to be a startling proposition, it is the necessary consequence of the doctrine in question; unless it can be maintained that a professed assignment of a term, which had no existence at the time, has the effect of creating a new interest, co-extensive with such surrendered term, which is clearly inadmissible, inasmuch as it is contrary to the purport of the deed; and, moreover, is negatived by the case of *Doe* v. *Hilder*, where an assignment had been professed to be executed by the limited administrator of the term, which was held to be surrendered in that case. Mr. Baron *Thomson*, indeed, in *Doe* v. *Scott*, 10 East, 483, seems to have thought that the recognition of the existence of a term by the parties beneficially interested precluded the presumption of a surrender from the antecedent neglect of it: but this hypothesis strikes at the root of the doctrine in *Doe* v. *Hilder;* for, if the act of the parties at one period could have this operation, it must be equally competent to them to produce the effect at all times; and, therefore, the attempt to use the term on the occasion which raises the question would be attended with the same consequences. Such a doctrine is repugnant to all principle. If the presumption-doctrine in question is established, of course there is an end, to a considerable extent, of the rule, which gives precedence to a subsequent purchaser, who, having no notice of a prior incumbrance when he purchased, gets in an outstanding legal estate (*f*); for the neglect of the first incumbrancer to avail himself of the term would itself raise a presumption of surrender, and the term would be powerless

(*f*) In the case of *Cholmondeley* v. *Clinton*, in the House of Lords, Lord *Eldon* adverted to this doctrine in the following terms:—"We have long laid it down, and I understand it to be still the law of the land, that if I lend my money on a mortgage, and the noble Lord who sits near me afterwards lends his money upon a mortgage of the same estate, having no notice of that mortgage; if he goes to the trustee of an old term, and gets in that term, having no notice to affect his conscience that I have a mortgage before, although that term was held, prior to his getting it in, in trust, first for me, and then for him, yet his conscience not being barred against the getting in that term, he will protect himself by that term; that is, he shifts the equity, which was first in me, into himself, and by his diligence he gets the advantage which I have lost."—*MS.* [*Vide ante*, Vol. 5, pp. 436 *et seq.*]

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in the hands of the second. The case, therefore, could never arise, unless in regard to a trust, which, at the time of the first incumbrance, had some subsisting object which *then* precluded the presumption, but subsequently became satisfied.

After the first edition of this work appeared, the case of *Doe* d. *Blacknell* v. *Plowman*, 2 B. & Ad. 573, was decided. In that case A. purchased certain freehold lands, which were conveyed to her in fee, and by the same indenture the residue of a mortgage term of 1,000 years was vested in a trustee for A. to attend the inheritance. Several years afterwards A. married, and on that occasion the lands in question were conveyed by A. to certain uses, under which she had a power of appointment, which power she exercised by will. Neither in the settlement nor in the will was any notice taken of the term, which was now set up as a bar to an ejectment brought by the persons claiming under A., but who contended, that, according to the doctrine of *Doe* v. *Hilder*, the term must be presumed to be surrendered; but the counsel for the plaintiff admitting, in answer to a question from the Lord Chief Justice, that it was not the general practice to notice such terms in marriage settlements, his Lordship declared that there was no ground whatever for the presumption. He moreover said, that he believed the doctrine of the cases of *Doe* v. *Wrighte* and *Doe* v. *Hilder* had been much questioned.

The reader cannot fail to perceive that this decision does not involve a departure from the presumption-doctrine, but merely denies its application to the case of a term being omitted to be noticed in a marriage settlement.

Effect of acts of disposition by *cestui que trust* in raising the presumption of a conveyance.

It is important to observe, that the principle of the general doctrine under consideration applies to other interests as well as terms of years (*g*). And, therefore, if a person having the equitable inheritance only, the legal fee being outstanding in a trustee for him, conveys that inheritance by an assurance adapted to pass the legal estate, and without referring to the outstanding legal title, a reconveyance would be presumed, though the period at which, according to the rules discussed in the preceding observations, such presumption would otherwise arise, may not have elapsed. What acts by the *cestui que trust* are to be deemed inconsistent with the continuance of the trustee's legal title, so as to have this accelerating operation upon the presumption, would of course be a question

(*g*) [As to presuming the ouster of one tenant in common by his co-tenant, see *Doe* v. *Phillips*, 3 Barn. & Ad. 753.]

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often arising in the application of the doctrine. [See *Jenny* v. *Jones*, 3 Moore & Sc. 472 : *Doe* d. *Rees* v. *Williams*, 2 Mee. & Welsb. 749.]

The granting of a beneficial lease, no doubt, would be held to be such an inconsistent act. Lady *Stafford* v. *Llewellyn*, Skinn. 77. In *Goodright* v. *Swymmer*, (1 Lord Ken. by Hanmer, 387), the court treated the granting of common leases at rack-rent as having no effect in raising the presumption. Such a dealing with the property, indeed, seems rather a mode of enjoyment than an exercise of dominion, though cases might be suggested in which the line would not be very distinct.

The Court of King's Bench has held, that the granting of the office of steward of a manor by the owner of the inheritance, without the concurrence of the trustee of an attendant term, was a ground for presuming a surrender of the term.

Bartlett v. *Downes.* Surrender of term in a manor presumed from trustee not joining in grant of the stewardship.

The facts shortly were, that, in 1785, a term (created in 1712) was assigned to attend the inheritance for A. A. sold to B., in 1793, on which occasion a general declaration was introduced into B.'s conveyance, that all persons having any terms of years should hold them in trust to attend the inheritance; but no mention was made of this term in particular. The wife of B. afterwards became seised of the property, (whether under a deed of settlement or will does not appear (*h*)), and in 1821 she granted to C. the office of steward of the manor of D., which formed part of the property in question. As such steward, C. brought an action against the defendant to recover certain fees which had been received by him when acting in that capacity. The defendant set up the outstanding term, as invalidating C.'s appointment to the stewardship. Lord *Tenterden* left it to the jury to say, whether they thought the term was still outstanding; and they found a verdict for the plaintiff, considering the term to be extinct. It was contended (on the argument for a new trial) that, as the term was expressly assigned to attend the inheritance in 1785, and the declaration as to all outstanding terms, which must have referred to this, was made in 1793, and there was no evidence of any other facts whence the jury could infer that it had been afterwards surrendered, the direction to the jury was wrong. But the court refused to disturb the verdict. Lord *Tenterden*, C. J., said—"The general principle upon which a presumption should be allowed, I think, is this: that that which has been done should be presumed to be rightly done;

(*h*) This would have been material if any stress had been laid upon the fact of the term having been noticed or not when the property was assured to her.

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and if we apply that principle to many cases of right, it must be taken to be so. Applying it to the question of a right of way—If we find the act has been often repeated, (for the occasional use of a walk or path across a man's field would be hardly such a use as would establish the right); but if the act must necessarily have been often repeated, with the knowledge of the persons acting upon an adverse right, it affords a strong presumption in favour of the right so exercised. The same principle is to be applied to presumptions in the case of light, or of flowing water. In each of these cases there must be a long continuance of enjoyment to warrant the presumption. But, upon the question of the surrender of a term, the case is somewhat different; for, with respect to conveyances, you cannot find in the nature of things repeated acts; it is not to be expected. And although that be so, the courts have, in many instances, for a considerable length of time, decided that juries are at liberty, where they find that such a term as this has been set up, and has done the duty for which it was originally created, to presume a surrender of it. In this case, there was the letter of C. Downes, [the defendant], admitting that Mrs. Ray had a right to appoint; whence it might be inferred, as against him, that the term did not exist. I therefore thought the jury might be justified in presuming this outstanding term to have ceased. Here the grant of the office, supposing such a term to be outstanding, would have been void at law, which certainly it was never meant to be. On the contrary, if you presume the term had merged, the grant of the office would be good. In that view of it, we are of opinion it might properly be left to the jury to presume a surrender of the term, to give validity and effect to the act of the testatrix in making the grant." *Bartlett* v. *Downes*, 5 D. & R. 526; 1 Car. & P. 52; 3 Barn. & Cr. 616.

Case of *Doe* d. *Graham* v. *Scott*.

If the grant of the office of steward without the concurrence of the trustee is a ground for presuming a surrender of an attendant term in a manor, it should seem that the presentation to a benefice would have the same effect in regard to a rectory or advowson; but the contrary was expressly decided in the case of *Doe* d. *Graham* v. *Scott*, 11 East, 479, though the term had never been assigned to attend the inheritance. The facts shortly were, that the Earl of Oxford, the owner of the rectory in question, presented Scott, the defendant, in 1801; and in consequence of his being collated to an augmented curacy in 1808, the Earl, and W. and S., the trustees of the term in question, presented Graham, the lessor of the plaintiff. In the interval, the Earl had conveyed the rectory, and all his

Termor not joining in presentation to a benefice, held no ground for presuming a surrender.

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estates, to trustees; and the defendant, therefore, contended that the term must be presumed to be surrendered; in which case the legal estate was in the last-mentioned trustees, who, and not the trustees of the term, ought to have concurred in the presentation of Graham. The facts as to the term were, that it was created in 1727, by the then Earl, to secure £20,000 by way of mortgage. The next mention of the term was in the marriage settlement of a subsequent Earl in 1752, wherein it was stated that the fortune of the lady was to be applied in discharge of the mortgage; which seems to have been done, for no further notice was taken of the term until 1802, which was after Mr. Scott's presentation, when it was assigned to another mortgagee. Mr. Baron *Thomson*, at the trial, was of opinion that there was no ground for presuming a surrender; and the Court of King's Bench, upon a motion for a new trial, was of the same opinion. Lord *Ellenborough* said—"There was no purpose of justice to be answered by presuming a surrender in this case, nor was it for the interest of the owner of the inheritance to have such a presumption made. It might have been his intention to keep alive the term, and to have it assigned to a trustee to attend the inheritance." The latter observation shews the noble judge to have thought, that, if the term had been so assigned, all question on the subject would have been precluded, little suspecting that, under his immediate successor in his high office, it would be adjudged in that court, that almost any act of ownership exercised over the land would warrant the presumption of a surrender even of a term assigned in the manner suggested by his Lordship.

In the case of *Doe* v. *Wrighte*, Mr. Justice *Bayley* expressed his concurrence in the decision of the case of *Doe* v. *Scott*, on the ground that the term had been dealt with as subsisting, and that it would have been prejudicial to the owner of the inheritance if a surrender had been presumed. When it is considered that in *Doe* v. *Scott*, there had been an act of ownership exercised by the person seised of the inheritance, without the concurrence of the trustee, which, according to the often expressed opinion of the Court of King's Bench, would be ground for presuming a surrender, the learned judge's approbation of the case involves this conclusion, that, notwithstanding an act or a series of acts by the beneficial owner, which would afford ground for presuming a surrender of the term as between third persons, it is competent to him still to treat the term as a subsisting interest; and that, therefore, in *Doe* v. *Wrighte*, *Doe* v. *Hilder*, and *Bartlett* v. *Downes*, if an ejectment had been brought by the owner of the inheritance in the name of

the trustee of the term, the presumption of a surrender would not have been admitted.

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Presumption of surrender not admitted to defeat an ejectment by owner in fee, in the name of his termor-trustee.

The reluctance of the courts to admit the doctrine of presumption, when advanced by a party in possession without any colourable title, as a ground of resistance to an ejectment brought by the proprietor in fee in the name of his trustee, is exemplified by the case of *Doe* d. *Hammond* v. *Cook*, 6 Bing. 174, S. C. nom. *Doe* d. *Harrop* v. *Cooke*, 3 M. & P. 411, where it appeared, that the premises in question, amongst others, were conveyed by indentures of lease and release of August, 1793, to the use of Lubbock and Clarke, for the term of 600 years, upon trust, by mortgage or sale, to raise £15,000, or so much thereof as Mr. Middleditch should by deed or will direct, and subject thereto to certain uses, with the ultimate remainder in fee to the use of Mr. Middleditch and his heirs; the deed of release containing a clause of cesser of the term, after full payment of the moneys raised under it, and of the costs of the trustees. By an indenture, dated 25th March, 1794, Lubbock and Clarke, the trustees, by the direction of Middleditch, assigned the premises in question, amongst others, to Charles Hammond, to hold for the said term of 600 years, subject to a proviso for redemption on payment of £6,000 and interest. Mr. Middleditch, who died in 1799, by his will, dated in Nov. 1798, devised all his real estates to Mangles and Taddy, and their heirs, upon trust, to sell so much thereof as was necessary to pay all moneys due upon mortgage of any part of his estate, and all his debts and legacies; and, as to the residue, in trust for the separate use of his wife, her heirs and assigns. One of the demises (and it should seem the only one on which the plaintiff could possibly recover) was laid in the name of the personal representative of Hammond the mortgagee. The defendant Cooke proved, that, in 1799, a suit was instituted in the Court of Chancery for carrying the will of Mr. Middleditch into effect; in which suit, amongst other persons, Charles Hammond, the mortgagee, was a party; and that, by certain decretal orders made in 1801 and 1802, it was ordered, (amongst other things), that the moneys should be raised by sale or mortgage of the estate, and that what was found due on the mortgage should be paid to the mortgagee, and all further directions and costs were reserved until after sale of the estates. No evidence was given as to any further proceedings in the Chancery suit, nor was any evidence adduced by Cooke of any title to the premises. His defence was founded solely on the presumption of the surrender of the term, the mortgage-debt appearing by the Chancery proceedings, it was said, to have been satisfied long since.

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Lord C. J. *Tindal* (after stating the case) observed—"No case can be put in which any presumption has been made, except where a title has been shewn by the party who calls for the presumption, good in substance, but wanting some collateral matter necessary to make it complete in point of form. In such case, where the possession is shewn to have been consistent with the existence of the fact directed to be presumed, and in such cases only, has it ever been allowed. Thus, in *Lade* v. *Holford*, Bull. N. P. 110, Lord *Mansfield* declared, that he and many of the Judges had resolved never to suffer a plaintiff in ejectment to be nonsuited by a term standing out in his own trustee, or a satisfied term set up by a mortgagor against a mortgagee, but that they would direct the jury to presume it surrendered (*i*); so, in *England* v. *Slade*, 4 T. R. 682 (*k*), where the lessor of the plaintiff claimed under a lease from John Pym, and it appeared that the estate had been devised by John Pym's father to trustees, in trust to convey to John Pym on his coming of age, and in the meantime for his maintenance; it was held, that though John Pym only came of age in 1788, and the trial took place in March, 1791, the jury might presume a conveyance to John Pym from the trustees, which it was their duty to make, and what a court of equity would have compelled. And where the same facts arose in the case of *Doe* d. *Bowerman* v. *Sybourn*, 7 T. R. 2, Lord *Kenyon* said, that, in all cases where trustees ought to convey to the beneficial owner, he would leave it to the jury to presume, where such a presumption could reasonably be made, that they had conveyed accordingly, in order to prevent a just title from being defeated by a matter of form. Again, in *Doe* v. *Hilder*, the surrender of a mortgage term was directed to be presumed in favour of a judgment-creditor, who had seized the land in question under an *elegit* taken out upon a judgment obtained against the owner of the inheritance. And, lastly, in *Doe* v. *Wrighte*, the presumption was in favour of the person who was proved to be heir-at-law, against the defendant claiming, but failing in proving himself to be the heir. In all these cases the presumption has been made in favour of the party who has proved a right to the beneficial ownership; the possession has been consistent with the existence of the surrender required to be presumed, and has made it not unreasonable to believe that the surrender should have been made in fact; and the presumption has been made accordingly, in order

(*i*) [And see *Doe* d. *Hodsden* v. *Staple*, 2 T. R. 696.]

(*k*) See some observations upon this case, *ante*, p. 452.

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to prevent justice from being defeated by a mere formal objection. But here we are called upon to declare, that the presumption ought to have been made in favour of a person who has proved no right to the possession, no title, no conveyance—a person who stands upon the mere naked possession, without any evidence how or when he acquired it. And what is stronger against the defendant, he lays before the jury only a partial statement of the ground of presumption, for he proves only the commencement of the proceedings in equity, without shewing their termination. Under these circumstances, the court thinks the defendant has not placed himself in a condition to call for any presumption in his favour, inasmuch as, for anything that appears to the contrary, the presumption which is asked for would rather tend to defeat than to promote the ends of justice. We therefore think that the verdict should remain for the plaintiff."

Presumption no defence by a trustee in a suit for compelling a conveyance.

It remains to be observed also, in conclusion, that, however strong may be the ground for presuming the reconveyance of an estate vested in a trustee, as between the *cestuis que trust* and third persons, such presumption cannot be alleged by the trustee as a reason for refusing to convey, at the instance of the *cestuis que trust*, and would furnish no defence to a suit by them for the purpose of compelling him to make such conveyance. *Goodson* v. *Ellison*, 3 Russ. 583.

RECONVEYANCES OF MORTGAGES.

PRECEDENTS.

1. RELEASE IN FEE BY MORTGAGEE TO MORTGAGOR.

1. SIMPLE RECONVEYANCE *from* MORTGAGEE *to* MORTGAGOR *by* LEASE *and* RELEASE.

Parties.

Recital of mortgage;

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*mortgagee*], of &c., of the one part; and [*mortgagor*], of &c., of the other part (*a*): WHEREAS, by indentures of lease and release, by way of mortgage, bearing date respectively the —— and —— days of ——, 18—, and respectively made between the said [*mortgagor*], of the one part, and the said [*mortgagee*], of the other part, in consideration of the sum of £—— then lent and advanced by the said [*mortgagee*] to the said [*mortgagor*], the said [*mortgagor*] Did convey and assure unto the said [*mortgagee*], and his heirs, *All that* (*describe parcels*), with their appurtenances; *To hold* the same unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, subject to redemption on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £—— and interest, on the —— day of —— then next: AND WHEREAS the said principal and interest moneys were not paid on the said —— day of ——, 18—, pursuant to the said proviso for redemption: AND WHEREAS the whole of the said principal sum of £ —— now remains owing to the said [*mortgagee*] by virtue of the said mortgage security,

—that money was not paid;

—that principal sum is owing;

(*a*) If the conveyance is to uses to prevent dower, mortgagee will be of the first part; mortgagor of the second part; and dower-trustee of the third part.

1. RELEASE IN FEE BY MORTGAGEE TO MORTGAGOR.

but all interest thereon has been discharged by the said [*mortgagor*] up to the day of the date of these presents, as the said [*mortgagee*] doth hereby acknowledge. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £—— of lawful money of Great Britain and Ireland paid by the said [*mortgagor*] to the said [*mortgagee*], at or before the execution of these presents, the receipt of which sum, and that the same is in full satisfaction and discharge of all principal and interest moneys secured by the hereinbefore-recited indenture of mortgage, the said [*mortgagee*] doth hereby acknowledge, and from the same sum, and from all claims and demands whatsoever, by virtue of the same indenture, doth release and discharge the said [*mortgagor*], his heirs, executors, administrators, and assigns, the said [*mortgagee*] *Doth* by these presents bargain, sell, and release unto the said [*mortgagor*] and his heirs, (in the actual possession of the said [*mortgagor*] now being by virtue of a bargain and sale made to him by the said [*mortgagee*], in consideration of 5*s.*, by indenture, bearing date the day next before the day of the date of these presents, for one year, computed from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession (*b*)), ALL THAT the —— hereinbefore described, and all other the hereditaments comprised in and assured by the hereinbefore-recited indentures of lease and release or mortgage, *Together* with all and singular the rights, members, and appurtenances whatsoever to the said premises belonging, or in anywise appertaining; *And also*, all the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of the said [*mortgagee*], in, to, or upon the said hereditaments and premises; *And also*, all deeds, papers, and writings relating to or in anywise concerning the title of the said hereditaments and premises, or any part thereof, which were delivered by the said [*mortgagor*] to the said [*mortgagee*], as such mortgagee as aforesaid; TO HAVE AND TO HOLD the said —— and hereditaments, and all and singular other the premises hereby released, or intended so to

Testatum:

In consideration of principal sum, mortgagee releases to mortgagor,

(reference to lease for a year),

Parcels.

General words.

All the estate.

All deeds.

(*b*) Where brevity is desired, this long parenthetical sentence may very properly be abbreviated, thus—
"(in the actual possession of the said [*mortgagor*] now being by virtue of a bargain and sale for a year.)"

1. RELEASE IN FEE BY MORTGAGEE TO MORTGAGOR.

be, with their appurtenances, unto the said [*mortgagor*] and his heirs for ever (*c*), *To the use* of the said [*mortgagee*], his heirs and assigns, for ever; And to or for no other use, intent, or purpose whatsoever. And the said [*mortgagee*] doth hereby declare that his widow (if any) shall not be entitled to dower in or out of the said hereditaments. (*Covenant by mortgagee that he has not incumbered.*) IN WITNESS &c.

(*c*) If to uses for preventing dower, say—

Variation, where the conveyance is to uses for preventing dower.

"TO SUCH USES, upon such trusts, and for such intents and purposes, and charged and chargeable with such sum or sums of money, either annual or in gross, and in such manner and form as the said [*mortgagor*] shall at any time, or from time to time, by any deed or deeds direct and appoint, and in default of such direction and appointment, TO THE USE of the said [*mortgagor*] and his assigns during his life, without impeachment for waste: and immediately after the determination of that estate by any means in his lifetime, TO THE USE of the said [*dower-trustee*], his executors and administrators, during the life of the said [*mortgagor*], *Upon trust,* nevertheless, for and for the only benefit of the said [*mortgagor*] and his assigns; and immediately after the determination of the estate hereby limited to the said [*dower-trustee*], his executors or administrators."

Uses to prevent dower.

[The insertion of uses to prevent dower in conveyances will be advisable for some time to come, although the party to whom the conveyance is made may be unmarried, or have been married subsequently to the 1st January, 1834, for the purpose of obviating the necessity, in future investigations of the title, of inquiring as to the fact.]

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2. SURRENDER OF UNDERLEASE FROM MORTGAGEE TO MORTGAGOR.

2. SURRENDER *of Mortgage* TERM *created by way of* UNDERLEASE *on Payment of Mortgage Debt.* (*Variation where* MORTGAGE TERM *was created out of, and is now merged in, the* FEE).

THIS INDENTURE, made the —— day of ——, 18—,

Parties.

BETWEEN [*mortgagee*], of &c., of the one part; and [*mortgagor*], of &c., of the other part:

Recital of mortgage;

WHEREAS, by indenture of demise by way of mortgage, bearing date on or about the —— day of ——, 18—, made between the said [*mort-*

gagor], of the one part, and the said [*mortgagee*], of the other part; the said [*mortgagor*] did grant and demise unto the said [*mortgagee*], his executors, administrators, and assigns, ALL THAT, (*describe parcels*), with the appurtenances thereunto belonging, *To hold* the same unto the said [*mortgagee*], his executors, administrators, and assigns (*a*), during all the residue then unexpired of a term of 99 years, created by an indenture of lease therein recited, bearing date on or about the —— day of ——, and commencing from the date of the said indenture of lease, except the last ten days of the said term; subject, nevertheless, to a proviso for redemption on payment by the said [*mortgagor*], his executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the principal sum of £400 and interest, on a day long since past: AND WHEREAS the said principal and interest moneys were not paid on the day so as aforesaid appointed for the payment thereof, but the sum of £100, part of the said principal sum of £400, hath since been paid by the said [*mortgagor*] to the said [*mortgagee*], as the said [*mortgagee*] doth hereby acknowledge: AND WHEREAS the principal sum of £300 still remains owing to the said [*mortgagee*] by virtue of his said mortgage security, but all interest thereon hath been fully discharged by the said [*mortgagor*] up to the date hereof, as the said [*mortgagee*] doth hereby acknowledge. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £300 of lawful British money, paid by the said [*mortgagor*] to the said [*mortgagee*] at or before the execution of these presents, in full satisfaction of all moneys now owing to the said [*mortgagee*] on the security of the above-recited indenture of mortgage, the receipt of which sum of £300 the said [*mortgagee*] doth hereby acknowledge, and from the same doth hereby acquit, release, and discharge the said [*mortgagor*], his (*b*) executors, administrators, and assigns, the

2. SURRENDER OF UNDERLEASE FROM MORTGAGEE TO MORTGAGOR.

—that money was not paid on the day appointed, but part has since been paid;

—that remaining principal sum is still due.

Testatum:

In consideration of remainder of principal money paid, mortgagee surrenders to mortgagor,

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(*a*) "for and during the full end and term of 500 years thence next ensuing and fully to be ended, subject nevertheless to a proviso for redemption, on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagee*]," &c.

Variation where mortgage term was created immediately out of the fee.

(*b*) "heirs, executors, administrators, and assigns."

Variation.

2. SURRENDER OF UNDER-LEASE FROM MORTGAGEE TO MORTGAGOR.

said [*mortgagee*] *Doth* by these presents assign, surrender, and yield up unto the said [*mortgagor*], his (*c*) executors, administrators, and assigns, ALL THOSE the —— and premises hereinbefore described, and all and singular other the premises comprised in and demised by the hereinbefore-recited indenture of demise or mortgage, with the appurtenances thereunto belonging; *And* all the estate, right, title, interest, claim, and demand, both at law and in equity, of the said [*mortgagee*] in and to the said premises; *And* all indentures, and other muniments of title, which were delivered by the said [*mortgagor*] to him the said [*mortgagee*], as such mortgagee as aforesaid; *To the intent* that the residue now unexpired of the term granted by the hereinbefore-recited indenture of mortgage, and all other the estate, term, and interest (if any) of the said [*mortgagee*] therein, may be merged and extinguished in the (*d*) immediate reversion of the same premises; and to or for no other intent or purpose whatsoever. (*Covenant by mortgagee that he has not incumbered, ut ante, p.* 313). IN WITNESS &c.

Parcels,

—and all the estate,

And all indentures, &c.;

To the intent that term may merge.

Variations.

(*c*) "heirs and assigns."

(*d*) "freehold reversion and inheritance."

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3. SURRENDER OF TERMS, AND RECONVEYANCE IN FEE BY SEVERAL MORTGAGEES.

3. SURRENDER *by two* MORTGAGEES *for* YEARS *of their* RESPECTIVE TERMS, *in different Properties, and* RELEASE *in* FEE *by* ULTERIOR MORTGAGEE, *of the* PROPERTIES *comprised in the two several prior* MORTGAGES.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*mortgagee of* 500 *years' term*], of &c., of the first part; [*mortgagee of the* 1,000 *years' term*], of &c., of the second part; [*mortgagee in fee*], of &c., of the third part; [*mortgagor*], of &c., of the fourth part; and [*dower-trustee*], of &c., of the fifth part: WHEREAS, by indenture of mortgage by way of demise, bearing date on or about the —— day of ——, and made between the said [*mortgagor*], of the one part, and the said [*mortgagee of* 500 *years' term*], of the other part; In consideration of the sum of £1,000 lent

Recital of mortgage by demise for 500 years;

3. SURRENDER OF TERMS, AND RECONVEYANCE IN FEE BY SEVERAL MORTGAGEES.

and advanced by the said [*mortgagee of* 500 *years' term*] to the said [*mortgagor*], the said [*mortgagor*] did grant and demise unto the said [*mortgagee of* 500 *years' term*], his executors, administrators, and assigns, ALL THAT (*describe parcels*), *To hold* the same unto the said [*mortgagee of* 500 *years' term*], his executors, administrators, and assigns, for the term of 500 years thence next ensuing, subject to a proviso for redemption on payment by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagee of* 500 *years' term*], his executors, administrators, or assigns, of the sum of £1,000 with interest, on the —— day of —— then next; AND WHEREAS, by an indenture of mortgage by way of demise, bearing date on or about the —— day of ——, and made between the said [*mortgagor*], of the one part; and the said [*mortgagee of* 1,000 *years' term*], of the other part; in consideration of the sum of £700 lent and advanced by the said [*mortgagee of* 1,000 *years' term*] to the said [*mortgagor*], He the said [*mortgagor*] did grant and demise unto the said [*mortgagee of* 1,000 *years' term*], his executors, administrators, and assigns, ALL THAT (*describe parcels*), *To hold* the same unto the said [*mortgagee of* 1,000 *years' term*], his executors, administrators, and assigns, for the term of 1,000 years thence next ensuing, subject to a proviso for redemption on payment by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagee of* 1,000 *years' term*], his executors, administrators, or assigns, of the said sum of £700 with interest, on the —— day of —— then next; AND WHEREAS, by indentures of lease and release, or mortgage, bearing date respectively on or about the —— and —— days of ——, made between the said [*mortgagor*], of the one part; and the said [*mortgagee in fee*], of the other part; In consideration of the sum of £500 lent and advanced by the said [*mortgagee in fee*] to the said [*mortgagor*], he the said [*mortgagor*] did convey and assure unto the said [*mortgagee in fee*], his heirs, and assigns, *Firstly*, All and singular the hereditaments and premises comprised in and assured by the hereinbefore-recited indenture of mortgage of the —— day of ——; *Secondly*, All and singular the —— hereditaments and premises comprised in and assured by the hereinbefore-recited indenture of mortgage of the —— day of ——, *To hold* the same unto and to the use of the said [*mortgagee in fee*], his heirs and assigns, for ever; subject as to the

—of mortgage for 1,000 years;

—of mortgagee in fee of the hereditaments comprised in both the former mortgages;

3. SURRENDER OF TERMS, AND RECONVEYANCE IN FEE BY SEVERAL MORTGAGEES.

hereditaments firstly thereinbefore described, to the mortgage term of 500 years created by the hereinbefore-recited indenture of mortgage of the —— day of——, and to the payment of the principal sum of £1,000 and interest, thereby intended to be secured; and subject, as to the hereditaments secondly thereinbefore described, to the mortgage term of 1,000 years, created by the hereinbefore-recited indenture of mortgage of the —— day of ——, and to the payment of the principal sum of £700 and interest thereby intended to be secured; and subject, as to all the hereditaments firstly and secondly thereinbefore described, to a proviso for redemption on payment by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagee in fee*], his executors, administrators, or assigns, of the sum of £500 with interest, on the —— day of —— then next; AND WHEREAS the said three several principal sums of £1,000, £700, and £500, are now due and owing to the said [*three mortgagees*] respectively, upon or by virtue of their said several mortgage securities, but all interest on the said principal sums respectively has been paid and discharged up to the day of the date of these presents, as the said [*mortgagees*] do hereby respectively acknowledge; AND WHEREAS the said [*mortgagor*] hath requested the said [*three mortgagees*] to accept payment of the several principal sums owing to them respectively as aforesaid, which they have consented to do, and to execute such surrenders, release, and assurance of the hereditaments vested in them respectively as are hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £1,000 of lawful British money, paid by the said [*mortgagor*] to the said [*mortgagee of 500 years' term*], at or before the execution of these presents, in full satisfaction of all moneys owing to him on the security of the above-recited indenture of mortgage of the —— day of ——, and also in consideration of the sum of £700, of like lawful money, at the same time paid by the said [*mortgagor*] to the said [*mortgagee of* 1,000 *years' term*], in full satisfaction of all moneys owing to him on the security of the above-recited indenture of mortgage of the —— day of ——, *And also* in consideration of the sum of £500, of like lawful money, at the same time paid by the said [*mortgagor*] to the said [*mortgagee in fee*], in full satisfaction of all moneys due to him on

—that all the principal sums are due;

—that mortgagees had consented to receive same.

Testatum:

In consideration of mortgage-moneys paid by mortgagor to the several mortgagees, they release and surrender to mortgagor.

the security of the above-recited indenture of mortgage, the receipt of which sums of £1,000, £700, and £500, respectively, the said [*three mortgagees*] do respectively hereby acknowledge, and from the same acquit, release, and for ever discharge the said [*mortgagor*], his heirs, executors, administrators, and assigns, He the said [*mortgagee in fee*] *Doth*, by these presents, bargain, sell, and release; And the said [*mortgagee of* 500 *years' term*], as to and concerning the hereditaments comprised in and demised by the hereinbefore-recited indenture of mortgage of the —— day of ——, And the said [*mortgagee of* 1,000 *years' term*], as to and concerning the hereditaments comprised in and demised by the hereinbefore-recited indenture of mortgage of the —— day of ——, and to the intent that the residues of the said two several terms of 500 years and 1,000 years, respectively created by the two several last-mentioned indentures, may be merged and extinguished in the inheritance of the hereditaments comprised therein respectively, *Do*, and each of them *Doth*, by these presents, assign, surrender, and yield up unto the said [*mortgagor*] and his heirs, (in the actual possession of the said [*mortgagor*] now being, by virtue of a bargain and sale to him thereof made by the said [*mortgagee in fee*] for a pecuniary consideration, by indenture bearing date the day next before the date of these presents, for one whole year commencing from the day next before the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession), ALL AND SINGULAR the —— and hereditaments hereinbefore described, and all other the premises comprised in the three several hereinbefore-recited indentures of mortgage respectively, together with all the rights, members, and appurtenances thereunto belonging; *And also*, all the estate, right, title, interest, use, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*three mortgagees*], and each and every of them, in, to, or out of the said hereditaments and premises; To HAVE AND TO HOLD the said —— and hereditaments, and other the premises hereby released or otherwise assured, or intended so to be, with the appurtenances, unto the said [*mortgagor*] and his heirs; To SUCH USES, and for such estate or estates, in such proportions, and for such intents and purposes as the said [*mortgagor*] shall at any time, or from time to time, by any deed or deeds, direct or appoint; and

3. SURRENDER OF TERMS, AND RECONVEYANCE IN FEE BY SEVERAL MORTGAGEES.

(reference to bargain and sale),

Parcels,

All the estate, &c.

Habendum,

to uses to prevent dower.

3. SURRENDER OF TERMS, AND RECONVEYANCE IN FEE BY SEVERAL MORTGAGEES.

in default of or subject to any such direction or appointment, To THE USE (*uses to prevent dower, ut ante, p.* 476): AND the said [*three mortgagees*], for themselves respectively, and for their respective heirs, executors, and administrators, but each of them as to and concerning his own acts, deeds, and defaults only, do hereby covenant with the said [*mortgagor*] and his heirs, That they the said [*three mortgagees*] have not nor have, nor hath any or either of them, at any time or times heretofore, made, done, committed, or knowingly suffered any act, deed, matter, or thing by means whereof the ——, hereditaments, and premises by them respectively hereby released and surrendered, or intended so to be, are or is impeached, charged, or incumbered in title, estate, or otherwise howsoever, except as to the said [*mortgagee in fee*], a certain indenture of lease, bearing date the —— day of ——, granted by him the said [*mortgagee in fee*] unto [*lessee*], of &c., of part of the hereditaments hereby intended to be assured, for the term of seven years determinable as therein mentioned, at the yearly rent of £——, pursuant to a power for that purpose contained in the hereinbefore-recited indenture of mortgage, of the —— day of —— (*a*). IN WITNESS &c.

Covenant by mortgagees that they have not incumbered, except as to one of them, by granting a lease under a power in his mortgage deed.

As to leases by mortgagees.

(*a*) As to the utility of powers of leasing in mortgages, *vide ante*, Vol. 5, pp. 357, 358. This lease would, of course, have been void against the prior mortgagees, but the merger of the terms vested in those mortgagees, or rather of the younger of the two terms, which, by uniting with, would absorb the elder term, would be prevented, *pro tanto*, by the existence of such an intervening interest. If this were likely to be attended with inconvenience, the lease might be surrendered, and a new lease granted to the lessee. If the lease had been granted by one of the mortgagees for years, the term vested in such lessor must have been kept on foot, in order to prevent the extinguishment of the immediate reversion expectant on the lease, by which the remedies against the lessee, incident to that reversion, would be destroyed, (*vide ante*, Vol. 4, p. 493, 2nd ed.); or, which would be the better course, the subsisting lease might be surrendered, and a new lease granted.

As to the form of leases granted by mortgagees, in which the mortgagor concurs, *vide ante*, Vol. 5, p. 357.

4. [GRANT *and* SURRENDER *by* TRUSTEE *for Transferree of Mortgage and* TRANSFERREE, *to* MORTGAGOR, *the Estate having been limited to the* MORTGAGEE, *his Executors, &c., for a* TERM *of* YEARS, *and, subject to the Term, to his* TRUSTEE *in* FEE (*a*).

4. GRANT AND SURRENDER BY TRANSFERREE OF MORTGAGE AND HIS TRUSTEE.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*trustee*], of &c., of the first part; [*transferree*], of &c., of the second part; and [*mortgagor*], of &c., of the third part (*b*): (*Recite indenture of lease and release, and mortgage;—proviso for redemption,—power of sale,—and power to appoint new trustees, ut ante, p.* 378). AND WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between [*mortgagee*] of the first part, [*former trustee*] of the second part, the said [*transferree*] of the third part, and the said [*trustee*] of the fourth part, the said mortgage debt or principal sum of £200, and the securities for the same, were transferred and assigned unto the said [*transferree*] for his absolute use and benefit, and the said —— and hereditaments were assigned unto the said [*transferree*], his executors, administrators, and assigns, for the residue of the said term of 500 years therein; AND WHEREAS, by the now reciting indenture, the said [*transferree*] was authorized, as the attorney irrevocable of the said [*mortgagee*], in the name or names of the said [*mortgagee*], his executors or administrators, to demand and receive the said principal sum of £200, and all interest then due, or thereafter to grow due for the same, and on payment or receipt thereof, or of

Parties.

Recital of mortgage;

—of transfer of mortgage;

(*a*) [This precedent affords an example of a reconveyance by a single deed of an estate mortgaged in fee—the original mortgage having been framed in conformity to the precedent given *ante*, Vol. 5, p. 585.]

(*b*) [There seems to be no necessity for making the original mortgagee, or his personal representatives, if he be dead, join in the reconveyance by the transferree, although, if any value were placed on a *legal* release of the debt, and the original mortgagee were dead, his representatives should be made parties for the purpose of releasing the debt, which they alone could do at law; and, if he were not dead, he should join for the purpose of shewing that fact.]

As to making the original mortgagee, or his representatives, join in reconveyance.

4. GRANT AND SURRENDER BY TRANSFERREE OF MORTGAGE AND HIS TRUSTEE.

any part thereof, to give sufficient releases and discharges for the same: And whereas, by the now reciting indenture, the said [*trustee*] was duly appointed a trustee thereunder in the room of the said [*former trustee*], whereby the said —— and hereditaments became vested in the said [*trustee*], his heirs and assigns, for ever, subject to the said term of 1,000 years therein. And whereas the whole of the said principal sum of £200 now remains owing to the said [*transferree*], as such transferree of the said mortgage security as aforesaid, but all interest thereon has been discharged by the said [*mortgagor*], down to the date of these presents, as the said [*transferree*] doth hereby acknowledge. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £200 of lawful British money, already paid by the said [*mortgagor*] to the said [*transferree*], the receipt of which sum, and that the same is in full satisfaction and discharge of all principal and interest moneys secured by the hereinbefore-recited indenture of mortgage, the said [*transferree*], as such transferree, and also as such attorney as aforesaid, doth hereby acknowledge, and from the same sum, and from all other claims and demands by virtue of the said indenture, doth release and discharge the said [*mortgagor*], his executors, administrators, and assigns, and also, in consideration of 5*s.* of like lawful money by the said [*mortgagor*] to the said [*trustee*] already paid, the receipt whereof is hereby acknowledged, the said [*trustee*] *Doth*, by the direction of the said [*transferree*], give (*c*), grant, aliene, and confirm, and the said [*transferree*] doth assign, surrender, and yield up unto the said [*mortgagor*] and his heirs, ALL AND SINGULAR the —— and hereditaments hereinbefore described, and all other the hereditaments comprised in and assured by the hereinbefore-recited indenture of lease and release and mortgage, TOGETHER with all and singular the rights, members, and appurtenances whatsoever, to the same premises belonging, or in anywise appertaining; *And also*, all the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of them the said [*trustee*] and [*transferree*], or either of them, in, to, or upon the said here-

—that principal sum is owing.

Testatum:

In consideration of principal sum being paid to transferree, and for nominal consideration.

trustee and transferree grant and surrender to mortgagor and his heirs,

Parcels;

All the estate;

(*c*) [As to the harmlessness of these words in a conveyance by trustee, *vide ante*, Vol. 1, p. 424, in the 1st and 2nd editions. It may be added, that the writ of *warrantia chartæ* is now abolished by the stat. 3 & 4 Will. 4, c. 27, s. 36.]

ditaments and premises. *And also* all deeds, papers, and writings, relating to, or in anywise concerning the said hereditaments and premises, or any part thereof, which were delivered by the said [*mortgagee*] to the said [*transferree*], as such transferree of the said mortgage security as aforesaid. (*Habendum to use of mortgagor in fee, ut ante, p.* 475. *Covenant by trustee and transferree respectively, that they have not incumbered*). IN WITNESS &c.]

4. GRANT AND SURRENDER BY TRANSFERREE OF MORTGAGE AND HIS TRUSTEE.

All deeds.

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5. RELEASE *in* FEE *to a* MORTGAGOR *by the* INFANT HEIR *of a* MORTGAGEE, *under an* ORDER *of the* COURT *of* CHANCERY, *of the* UNSOLD PART *of an* ESTATE *which had been* MORTGAGED *with a* POWER *of* SALE, *the Executors concurring as directing Parties.*

5. BY INFANT HEIR UNDER ORDER OF CHANCERY.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—, BETWEEN [*heir of mortgagee*], of &c. (eldest son and heir-at-law of [*mortgagee*], late of ——, deceased, an infant under the age of twenty-one years), of the first part; [*executors of deceased mortgagee*], of &c., (the executors named in the last will and testament of the said [*mortgagee*], deceased), of the second part; and [*mortgagor*], of &c., of the third part: WHEREAS, by indentures of lease and release bearing date respectively on or about the —— and —— days of ——, and made between the said [*mortgagor*], of the one part, and the said [*mortgagee*], of the other part, in consideration of the sum of £—— lent and advanced by the said [*mortgagee*] to the said [*mortgagor*], *He* the said [*mortgagor*] did convey and assure unto the said [*mortgagee*] and his heirs, *All those* five messuages or dwelling-houses situate and being in —— street, in the city of ——, and numbered 3, 4, 5, 6, and 7, in the said street, and then in the several occupations of ——, *To hold* the same unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, subject to a proviso for redemption on payment by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagee*], his executors, administrators, or assigns, of the sum of £——, with interest at the rate of £4 per centum per annum, on the —— day of ——

Parties.

Recital of mortgage;

5. BY INFANT HEIR UNDER ORDER OF CHANCERY.

then next; and in the said indenture was contained a power enabling the said [*mortgagee*], his heirs or assigns, in case of default of payment of the said principal and interest moneys at the time and in the manner aforesaid, absolutely to sell and dispose of the said hereditaments, or any part thereof, in fee-simple; and out of the moneys arising from such sale to retain or pay to him the said [*mortgagee*], his executors, administrators, or assigns, the principal sum and interest thereby intended to be secured, or so much thereof as should then remain unpaid, and to pay over the residue or surplus of the said purchase-money unto the said [*mortgagor*], his heirs, executors, administrators, or assigns: AND WHEREAS default was made in payment of the said sum of £—— and interest, on the day in the said proviso for redemption appointed for that purpose: AND WHEREAS, by an indenture bearing date on or about the —— day of ——, and made between the said [*mortgagor*], of the one part, and the said [*mortgagee*], of the other part, in consideration of the further sum of £—— lent and advanced by the said [*mortgagee*] to the said [*mortgagor*], the said [*mortgagor*] did subject and charge the hereditaments comprised in the hereinbefore-recited indentures of lease and release and mortgage, with the payment of the said sum of £—— and interest thereon at the rate aforesaid, from the day of the date of the indenture now in recital; and it was thereby declared, that all and singular the trusts, powers, and authorities contained in the hereinbefore-recited indenture of mortgage should extend and be available, to secure as well the sum of £—— and interest thereby charged thereon, as the sum of £—— and interest then already secured by the said indenture of mortgage (*a*): AND WHEREAS the said [*mortgagee*], in pursuance of the power vested in him by the hereinbefore-recited indenture of mortgage of the —— day of ——, made sale and disposed of three of the messuages comprised in the said indenture of mortgage, namely, Nos. 3, 4, and 5, in —— street aforesaid, and out of the produce of such sale retained and paid to himself the said two several principal sums of £—— and £——, and all interest due thereon respectively up to the time of such payment, and paid over the residue of the

—default of payment;

—deed of further charge;

—sale by mortgagee of part of the mortgaged property;

(*a*) As to the effect of additional securities upon existing powers of sale, *vide ante*, Vol. 5, p. 494.

5. BY INFANT HEIR UNDER ORDER OF CHANCERY.

moneys arising from the said sale (after retaining the expenses attending the same) unto the said [*mortgagor*], as he doth hereby acknowledge; but no reconveyance was made to the said [*mortgagor*] of the residue of the hereditaments comprised in the hereinbefore-recited indenture of mortgage, being the said two messuages numbered 6 and 7 in —— street aforesaid: AND WHEREAS the said [*mortgagee*] departed this life on or about the —— day of ——, leaving the said [*heir*], his eldest son and heir-at-law, then and now an infant, him surviving, having first duly made and published his last will and testament in writing, bearing date on or about the —— day of ——, and thereof appointed the said [*executors*], executors, who, soon after his decease, duly proved the same in the Prerogative Court of the Archbishop of Canterbury, but which will did not contain any express disposition of, or any devise capable of operating upon, real estates vested in the said testator as mortgagee (*b*): AND WHEREAS, by an order of the High Court of Chancery, bearing date the —— day of ——, made by his Lordship the Master of the Rolls, in the matter of the said [*heir*], an infant, on the petition of the said [*mortgagor*], it was ordered to be referred to the Master in rotation, to inquire how the estate in the said petition mentioned (being the hereditaments comprised in the hereinbefore-recited indenture of mortgage remaining unsold as aforesaid) was vested in the said [*heir*], and whether he was an infant and trustee within the intent and meaning of the act of Parliament passed in

—death of mortgagee, intestate as to real estates in mortgage, but leaving a will appointing executors;

—order of Chancery directing the infant to convey.

(*b*) A person who allows an estate of inheritance vested in him as mortgagee to descend to an infant heir for want of a devise, inflicts, by his negligence, an injury upon the mortgagor, in subjecting him to the necessity of obtaining an order of the Court of Chancery for the infant to convey, in order to perfect the title to the legal estate. Whenever a person has acquired an estate in fee in lands as mortgagee, his solicitor should inquire whether his will contains a devise of estates in mortgage; if so, and the will was made before the 1st of January, 1838, it should be republished; if not, a codicil, or, if there is no previous will, a will should be executed for the purpose of disposing of such estates. It would be well if devises of mortgage and trust estates were inserted in every will, as a matter of course.

As to mortgagee allowing estate to descend to an infant.

It is scarcely necessary to remark, that the preceding observations do not apply to mortgages *for years*, of which the legal estate vests in the executor or administrator of the mortgagee as part of his personal estate; and, of course, it is immaterial whether the will was made before or after the mortgage.

5. BY INFANT HEIR UNDER ORDER OF CHANCERY.

the first year of the reign of his Majesty William the Fourth, cap. 60 (*c*). AND WHEREAS Samuel Duckworth, Esq., the Master in rotation, to whom the said matter was referred, by his report, bearing date the —— day of ——, found that the principal sums of £—— and £——, secured by the said several indentures of the —— day of —— and the —— day of ——, and the interest thereon respectively, had been paid off and discharged in the lifetime of the said [*mortgagee*] in manner aforesaid, and that the legal estate in fee-simple in the hereditaments comprised in the said indenture (except such parts thereof as had been disposed of as aforesaid) was then vested in the said [*heir*], as the heir-at-law of the said [*mortgagee*], deceased, and that he was an infant, and was a trustee within the intent and meaning of the said act of Parliament: AND WHEREAS, by an order of the said Court of Chancery, bearing date the —— day of ——, made by his Lordship the said Master of the Rolls, it was ordered that the said Master's report should be confirmed; And that the said [*heir*], the infant, should convey the estate therein mentioned, according to the said report, pursuant to the act of Parliament. NOW THIS INDENTURE WITNESSETH, that, by virtue of, and in obedience to, the hereinbefore-recited order of the said Court of Chancery, and also for and in consideration of the said sum of £——, and all interest due in respect thereof, having been so paid and satisfied as hereinbefore mentioned, (the receipt whereof by the said [*mortgagee*], and that the same was in full satisfaction of all principal and interest moneys due upon or in respect of the hereinbefore-recited indentures of mortgage and further charge, the said [*executors*] do hereby acknowledge, and therefrom do release and discharge the said [*mortgagor*], his heirs, executors, and administrators, and also the said mortgaged premises, by these presents), *He*, the said [*heir*], with the consent and by the direction of the said [*executors*], testified by their respectively executing these presents, and with the approbation of the said Master, testified by his signature appearing in the margin hereof, *Doth*, by these presents, bargain, sell, and release, and the said [*executors*] *Do* remise, release, and quit claim, unto the said [*mortgagor*] and his heirs, (in the actual possession

Testatum: In obedience to the order of court, and with the consent of the executor, the heir conveys, and the executors release, unto the mortgagor.

(*c*) *Vide ante*, p. 420.

5. BY INFANT HEIR UNDER ORDER OF CHANCERY.

of the said [*mortgagor*], now being by virtue of a bargain and sale to him thereof made by the said [*heir*], in consideration of *5s.*, by indenture bearing date the day next before the day of the date of these presents, for one year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession), ALL THOSE the said two messuages or tenements, being Nos. 6 and 7 in —— street, in the city of —— aforesaid; *And also* all and singular other the hereditaments (if any) comprised in the hereinbefore-recited indentures of mortgage and further charge, or either of them, remaining undisposed of by the said [*mortgagee*], by virtue of the power for that purpose contained in the hereinbefore-recited indenture of mortgage, *Together* with all and singular the rights, members, and appurtenances to the same premises belonging; *And* all the estate, right, title, interest, use, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*heir*] and [*executors*] respectively in or to the same; TO HAVE AND TO HOLD the said hereditaments, and all and singular other the premises hereby released or otherwise assured, or intended so to be, with their appurtenances, unto the said [*mortgagor*], and his heirs, TO THE USE of the said [*mortgagor*], his heirs and assigns, for ever (*d*); And to or for no other use, intent, or purpose whatsoever. IN WITNESS &c.

And all the estate, &c.

Habendum.

(*d*) If to uses to prevent dower, vary the precedent accordingly, *ut ante*, p. 476. The usual mortgagee's covenant, that he has not incumbered, is not added, because the executors, having no estate, ought not to enter into such a covenant, and the infant is under a personal incapacity to do so; his infancy, indeed, renders it impossible that he could have created any incumbrance.

6. RE-ASSIGNMENT of LEASEHOLDS.

6. RE-ASSIGNMENT *of* LEASEHOLDS (*which had been mortgaged, with a* POWER *of* SALE) *on* RE-PAYMENT *of the* MORTGAGE DEBT. (VARIATION *where* PART *of the mortgaged* PROPERTY *is* RE-ASSIGNED *on Payment of a* PROPORTION *of the* DEBT. *Also, where the Mortgagee* RE-ASSIGNS *Part without any pecuniary Consideration*).

Parties.

Recital of lease;

—of mortgage;

THIS INDENTURE, made the —— day of ——, BETWEEN [*mortgagee*], of &c., of the one part; and [*mortgagor*], of &c., of the other part: WHEREAS, by an indenture of lease bearing date on or about the —— day of ——, and made between [*lessor*], of &c., of the one part, and the said [*mortgagor*], of the other part; the said [*lessor*] demised unto the said [*mortgagor*], his executors, administrators, and assigns, *All that* &c. (*describe parcels*), with the appurtenances thereunto belonging, *To hold* the same unto the said [*mortgagor*], his executors, administrators, and assigns, from the —— day of —— then last, for the term of —— then next ensuing, at the yearly rent of £——, payable quarterly, as therein mentioned, and subject to the observance and performance of certain covenants and conditions in the said indenture of lease expressed, and on the part of the [*lessee*] therein named to be observed and performed: AND WHEREAS, by an indenture of assignment by way of mortgage, bearing date on or about the —— day of ——, and made between the said [*mortgagor*], of the one part, and the said [*mortgagee*], of the other part, the said [*mortgagor*], in consideration of the sum of £—— then lent and advanced to him by the said [*mortgagee*], granted and assigned unto the said [*mortgagee*], his executors, administrators, and assigns, *All and singular* the —— and premises hereinbefore described, and demised by the hereinbefore-recited indenture of lease, with their appurtenances, for the residue then unexpired of the term of —— years thereby granted; but subject, nevertheless, to a proviso or condition therein contained for the redemption of the said premises on payment by the said [*mortgagor*], his heirs, execu-

6. RE-ASSIGNMENT OF LEASEHOLDS.

tors, or administrators, unto the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £——, with interest for the same, on the —— day of —— then next; And in the said indenture was contained a power enabling the said [*mortgagee*], his executors, administrators, and assigns, in case default should be made in payment of the said principal sum of £—— on the said —— day of ——, or the interest thereon, or any part thereof, to make sale and absolutely dispose of the said —— and premises, and out of the moneys arising from such sale to retain to himself or themselves the principal moneys and interest thereby intended to be secured, or so much thereof as should then be due and owing, and all costs and expenses attending the said sale; with a direction to pay the surplus (if any) to the said [*mortgagor*], his executors, administrators, or assigns, for his and their own use and benefit: AND WHEREAS default was made by the said [*mortgagor*] in payment of the said principal and interest moneys on the day appointed for the payment thereof by the proviso for redemption contained in the hereinbefore-recited indenture of mortgage; but no part of the —— and premises therein comprised has been sold by the said [*mortgagee*] in execution of the hereinbefore-mentioned power of sale: AND WHEREAS the said principal sum of £—— still remains due and owing to the said [*mortgagee*], by virtue of the hereinbefore-recited indenture of mortgage, but all interest for the same hath been fully paid and satisfied up to the day of the date of these presents, as the said [*mortgagee*] doth hereby acknowledge (*a*): AND WHEREAS the said [*mortgagee*] hath called upon and requested the said [*mortgagor*] to pay off and discharge the principal sum of £—— owing to the said [*mortgagee*] as aforesaid, which he the said [*mortgagor*] hath agreed to do, upon having an assignment of the said —— and pre-

—of default in payment;

—that principal remained due;

—that mortgagee had applied for payment.

(*a*) If the mortgagee re-assigns part of the property on payment of part of the debt, proceed as follows:—

"AND WHEREAS the said [*mortgagor*] hath requested the said [*mortgagee*] to assign to him the —— and premises hereinafter described, and hereby intended to be assigned, being part of the —— and premises comprised in the hereinbefore-recited indenture of mortgage, in consideration of the said [*mortgagor*] paying to the said [*mortgagee*] the sum

—that mortgagor had applied to mortgagee to assign part of the property on payment of part of the debt.

6. RE-ASSIGNMENT OF LEASEHOLDS.

Testatum.

In consideration of principal money paid, mortgagee assigns to mortgagor,

mises executed to him, as hereinafter is expressed. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for and in consideration of the said principal sum of £—— of lawful British money paid by the said [*mortgagor*] to the said [*mortgagee*] at or immediately before the sealing and delivery of these presents, (the receipt whereof, [and that the same is in full payment and satisfaction of all principal moneys and interest, and other moneys due to the said [*mortgagee*] under or by virtue of the hereinbefore-in-part-recited indenture of mortgage (*b*)], the said [*mortgagee*] doth hereby acknowledge, and from the same sum doth acquit, release, and for ever discharge the said [*mortgagor*], his executors, administrators, and assigns, and also the said mortgaged premises, for ever, by these presents (*c*)), *He* the said [*mortgagee*] *Doth* by these presents bargain, sell, assign, and transfer unto the said [*mortgagor*], his executors, administrators, and as-

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of £—— in part payment of the principal sum of £—— owing to him on the above-recited mortgage security, which the said [*mortgagee*] hath consented and agreed to do."

If the mortgagee give up part of his security without any pecuniary consideration, the recital may be varied thus:—

—that mortgagee hath agreed to assign part, being satisfied that the residue was an ample security.

"AND WHEREAS the said [*mortgagor*] hath requested the said [*mortgagee*] to assign to him the —— and premises hereinafter described, and hereby intended to be assigned, being part of the —— and premises comprised in the hereinbefore-recited indenture of mortgage; which the said [*mortgagee*] hath consented and agreed to do, he being satisfied that the residue of the said premises is an ample security for his said mortgage debt. NOW THIS INDENTURE" &c.

(*b*) If part of the money only is paid, of course these words will be omitted.

(*c*) If the assignment is made without any pecuniary consideration, instead of the consideration in the text, say—

"In consideration of the sum of 10*s.* of lawful British money paid by the said [*mortgagor*] to the said [*mortgagee*] at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*mortgagee*]" &c.

6. RE-ASSIGNMENT OF LEASEHOLDS.

signs (*d*), ALL AND SINGULAR the —— and premises hereinbefore described, and all other the —— and premises (if any) which are assigned or otherwise assured to him the said [*mortgagee*] in and by the hereinbefore-recited indenture of mortgage, with their and every of their rights, members, and appurtenances: And all the estate, right, title, trust, interest, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said [*mortgagee*] in or to the premises hereby assigned, and every or any part thereof, by virtue of the hereinbefore-recited indenture of mortgage, *Together* (*e*) with the two several hereinbefore-recited indentures of lease and mortgage, and all other the deeds, evidences, and writings now in the custody or power of him the said [*mortgagee*], as such mortgagee as aforesaid, relating to the said premises, or any part thereof; TO HAVE AND TO HOLD the said —— and all and singular other the premises hereby assigned, or intended so to be, unto the said [*mortgagor*], his executors, administrators, and assigns, for and during all the residue now to come and unexpired of the term of —— years so assigned to the said [*mortgagee*] by the hereinbefore-recited indenture of the —— day of —— as aforesaid, and for all other the estate, term, and interest (if any) of the said [*mortgagee*], under and by virtue of the same indenture, wholly and absolutely freed, exonerated, and discharged of and from the said principal sum of £—— and interest, and all claims and demands of the said [*mortgagee*] in respect thereof. AND the said [*mortgagee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagor*], his executors, administrators, and assigns, that he the said [*mortgagee*] hath not at any time heretofore made, done, executed, or permitted any act, deed, matter, or thing, by means whereof the —— and premises hereby assigned, or intended so to

Parcels;

All the estate;

Together with recited indentures, and all other deeds,

Habendum.

Covenant by mortgagee that he has not incumbered.

(*d*) If the assignment comprises part only of the mortgaged premises, *ut ante*, p. 491, proceed as follows:—

"*All that* (*describe parcels*), being part and parcel of the —— and premises comprised in and assigned by the hereinbefore-recited indenture of mortgage, with their appurtenances."

Variation where part only is reassigned.

(*e*) If part only of the premises is assigned, of course the deeds will not be included in the assignment.

6. RE-ASSIGNMENT OF LEASEHOLDS.

be, or any part thereof, are or is charged, incumbered, or in anywise prejudicially affected in title, estate, or otherwise howsoever (*f*). IN WITNESS &c.

(*f*) As a mortgagee-assignee of leaseholds is liable to the rent and covenants during the period of his ownership, he ought to ascertain that they have been performed before he parts with the estate. If this be dispensed with, the mortgagee should at least have a covenant from the mortgagor to the following effect:—

Covenant by mortgagor that he has performed covenants of lease, and to indemnify mortgagee therefrom.

"AND the said [*mortgagor*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*mortgagee*], his executors and administrators, that he the said [*mortgagor*] hath at all times heretofore, since the execution of the hereinbefore-recited indenture of mortgage up to the day of the date of these presents, paid, discharged, and performed the rents, covenants, and agreements respectively reserved and contained by and in the above-recited indenture of lease, and which, on the part of the lessee therein named, ought to be paid, observed, and performed; And that he the said [*mortgagor*], his heirs, executors, or administrators, will at all times hereafter effectually save harmless and keep indemnified him the said [*mortgagee*], his executors and administrators, from and against all actions, suits, and other proceedings at law or in equity, and all costs, charges, damages, and expenses whatsoever by reason or in respect of the same rent, covenants, and agreements, respectively, or of any matter, cause, or thing in anywise relating thereto."

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7. IN FEE TO THE USES OF THE WILL OF THE MORTGAGOR.

7. RELEASE *in Fee to the* USES *of the* WILL *of the* MORTGAGOR, *on the* MORTGAGE DEBT *being paid off by his* EXECUTORS. (*Variation where the Mortgage, being for a* TERM, *is* SURRENDERED *to the first* DEVISEE *for* LIFE).

THIS INDENTURE, made the —— day of ——, BETWEEN [*mortgagee*], of &c., of the first part; [*executors*], of &c., the executors named in and appointed by the last will

Parties.

7. IN FEE TO THE USES OF THE WILL OF THE MORTGAGOR.

and testament of [*mortgagor*], late of ——, deceased, of the second part; and [*devisee*], of &c., devisee named in the said will, of the third part: WHEREAS (*a*), by indentures of lease and release, and appointment, bearing date respectively on or about the —— and —— days of ——, and made between the said [*mortgagor*], of the one part, and the said [*mortgagee*], of the other part, in consideration of the sum of £1,000 then paid and advanced by the said [*mortgagee*] to the said [*mortgagor*], the said [*mortgagor*] did convey and assure unto the said [*mortgagee*] and his heirs the —— and hereditaments hereinafter described and hereby released, with their appurtenances, *To hold* the same unto and to the use of the said [*mortgagee*], his heirs and assigns for ever, subject, nevertheless, to a proviso or condition in the said indenture of release contained for making void the same on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, unto the said [*mortgagee*], his executors, administrators, or assigns, of the said sum of £1,000, with interest for the same after the rate of £5 per centum per annum, on the —— day of —— then next: AND WHEREAS default was made by the said [*mortgagor*] in payment of the said principal sum and interest on the day mentioned in the said proviso for redemption: AND WHEREAS the said [*mortgagor*], in and by his last will and testament, bearing date on or about the —— day of ——, gave and devised all his real estate whatsoever and wheresoever, and of what nature or kind soever, *To the use* of the said [*devisee for life*] and his assigns, for and during the term of his natural life, without impeachment for any manner of waste; and, after the determination of that estate by any means in his lifetime, *To the use of*

Recital of mortgage;

—default in payment;

—will of mortgagor devising his real estate in strict settlement;

(*a*) If the mortgage is for a term, say—

"AND WHEREAS, by indenture of demise or mortgage, bearing date on or about the —— day of ——, made &c., in consideration of the sum of £1,000 lent &c., the said [*mortgagor*] did demise and grant unto the said [*mortgagee*], his executors, administrators, and assigns, *All that* &c., *To hold* the same unto the said [*mortgagee*], his executors, administrators, and assigns, during the term of 1,000 years, commencing from the day next before the day of the date of the said indenture, subject, nevertheless, to a proviso or condition for making void" &c., *ut supra.*

Variation where mortgage is for a term.

7. IN FEE TO THE USES OF THE WILL OF THE MORTGAGOR.

[*trustees*], of &c., and their heirs, during the natural life of the said [*devisee for life*], *Upon trust* to support the contingent uses and estates thereinafter limited, yet nevertheless to permit the said [*devisee for life*] and his assigns to receive the rents and profits of the said hereditament and premises during the term of his natural life; and, after the decease of the said [*devisee for life*], *To the use* of the first son of the said [*devisee for life*], and the heirs male of the body of such first son; and, on failure of such issue, *To the use* of the second and every other son of the said [*devisee for life*], severally and successively in remainder, one after another, according to the priority of their respective births, and the heirs male of the body of each such son, so that every elder of the same sons, and the heirs male of his body, should always be preferred to every younger of the same sons, and the heirs male of his body; And on failure of such issue, *To the use* of the testator's own right heirs for ever: And in and by his said will the said [*testator*] empowered the said [*devisee for life*] during his life, and, after his decease, the guardian for the time being of any infant tenant in tail in possession, from time to time, to demise the real estate thereby devised, or any part thereof, for such term or period, and in such manner as in the said will is mentioned; And he also empowered the said [*trustees*], with the consent of the said [*devisee for life*], to sell (*b*) and dispose of the said real estate, or any part thereof, in such manner and for such purposes as in the said will is expressed (*c*); and the said [*testator*] appointed the said [*executors*] executors of his said will; AND WHEREAS the said [*mortgagor*] departed this life shortly after the date of his said will, without having

—death of testator, and probate of his will.

As to inserting power of sale in devise of lands in mortgage.

(*b*) A power of sale should always be inserted where lands in mortgage are devised to uses in strict settlement, unless it be quite clear that there will be other funds adequate to pay the mortgage debt, without resorting to the estate charged with it.

Remarks as to recitals of uses.

(*c*) Where a conveyance is made to the uses of a subsisting will or deed, it is usual to make it appear on the face of the conveyance (generally by the recital of the instrument) what those uses are, but of course this is not essential; if the limitations are long, and brevity is desired, they may properly be omitted. If the instrument containing the limitations should be lost, such recitals would be found useful; but this could scarcely happen in such a case as the present, where the instrument in question is a will which has been proved, and is therefore in the custody of the Ecclesiastical Court.

7. IN FEE TO THE USES OF THE WILL OF THE MORTGAGOR.

revoked or altered the same, and which said will was duly proved by the executors therein named in the Prerogative Court of the Archbishop of Canterbury, on or about the —— day of ——, 18—: AND WHEREAS the said principal sum of £1,000 still remains due and owing to the said [*mortgagee*] by virtue of the hereinbefore-recited indenture of mortgage, but all interest for the same hath been fully paid and discharged up to the day of the date of these presents, as the said [*mortgagee*] doth hereby acknowledge: AND WHEREAS the said [*devisee for life*] hath called upon and requested the said [*executors*] to pay off and discharge the principal sum of £1,000, owing to the said [*mortgagee*] as aforesaid on the said recited mortgage security, out of the personal estate of the said [*mortgagor*] deceased(*d*), which they the said [*executors*] are ready to do; and the said [*executors*] and [*devisee for life*] accordingly have requested the said [*mortgagee*] to receive his said mortgage debt, and to release and convey the hereditaments and premises comprised in the hereinbefore-recited indenture of mortgage to the uses and upon the trusts declared by the hereinbefore-recited will of the said [*mortgagor*], deceased, concerning his real estate, to which the said [*mortgagee*] hath consented. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said principal sum of £1,000 of lawful British money, paid by the said [*executors*] to the said [*mortgagee*] at or before the execution of these presents, the receipt of which sum, and that the same is in full satisfaction of all principal and interest moneys owing upon the above-recited mortgage security, the said [*mortgagee*] doth hereby admit and acknowledge, and from the same sum doth hereby for ever acquit, release, and discharge the said [*executors*], and other the real and personal representatives of the said [*mortgagor*], deceased; and also, in consideration of the sum of 10*s.* of lawful money aforesaid at the same time paid by the said [*devisee for life*] to the said [*mortgagee*], the receipt &c., *He* the said [*mortgagee*], at the request and by the direction of the said [*executors*], tes-

—that principal sum remains due.

—that executors intend to pay off mortgage out of testator's personal estate.

Testatum

In consideration of principal money paid by the executors, the mortgagee, by their direction, conveys to the devisee of the mortgagor.

(*d*) As to the right of the devisee, &c. of a mortgaged estate, as against the persons taking the residuary personal estate, to call upon the executors to pay off the incumbrance, *vide ante*, Vol. 5, p. 363.

7. IN FEE TO THE USES OF THE WILL OF THE MORTGAGOR.

tified by their severally executing these presents (*e*), *Doth* by these presents bargain, sell, and release unto the said [*devisee for life*] and his heirs, (in the actual possession of the said [*devisee for life*] now being, by virtue of a bargain and sale to him thereof made by the said [*mortgagee*], in consideration of *5s.*, by indenture bearing date the day next before the day of the date of these presents, for one year commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession), ALL AND SINGULAR the ——, hereditaments, and premises hereinbefore described, and all other the hereditaments (if any) which are appointed and released or otherwise assured to him the said [*mortgagee*] in and by the hereinbefore-recited indentures of lease, and appointment and release, or mortgage, or one of them, with their and every of their rights, members, and appurtenaces; And the reversion and reversions, remainder and remainders, yearly and other rents and profits thereof; *And* all the estate, right, title, and interest whatsoever, of him the said [*mortgagee*] therein and thereto, together with all deeds and writings in his custody or power, as such mortgagee as afore-

Parcels.

All the estate.

(*e*) If the mortgage were by demise, vary the precedent thus:—

Variation where mortgage was for a term.

"*Doth* by these presents assign, surrender, and yield up, unto the said [*devisee for life*] and his assigns, all the said —— and hereditaments, and all and singular other the premises comprised in the above-recited indenture of demise and mortgage of the —— day of ——, and thereby demised or intended so to be, together with all the rights, members, and appurtenances thereunto belonging; *And also* all the estate, right, title, property, interest, claim, and demand whatsoever, both at law and in equity, of the said [*mortgagee*], in, to, or out of the said hereditaments and premises with their appurtenances, to the intent, that, by virtue of these presents, the residue now unexpired of the term of 1,000 years created by the above-recited indenture of demise and mortgage of the —— day of ——, may merge in the immediate freehold of the same premises now vested in the said [*devisee for life*], and be thereby absolutely extinguished, and for no other intent or purpose whatsoever."

7. IN FEE TO THE USES OF THE WILL OF THE MORTGAGOR.

said, relating to the said hereditaments and premises; To HAVE AND TO HOLD the said —— and hereditaments, and all and singular other the premises hereby released or otherwise assured, or intended so to be, with their appurtenances, unto the said [*devisee for life*] and his heirs for ever, (freed and discharged of and from the said mortgage debt of £1,000 and interest, and all claims and demands in respect thereof), To THE USE of him the said [*devisee for life*] and his assigns, for and during the term of his natural life, without impeachment for any manner of waste; and, from and immediately after the determination of that estate, To such and the like uses, and upon and for such and the like trusts, ends, intents, and purposes, and subject to such and the like powers and provisions, as in and by the above-recited will of the said [*mortgagor*], deceased, are contained and expressed of and concerning the real estate of the said testator thereby devised, or such and so many of the same uses, trusts, intents and purposes, powers and provisions, as are now subsisting undetermined, and capable of taking effect; And to, for, or upon no other use, trust, intent, or purpose whatsoever.

Habendum to the uses of the mortgagor's will.

AND the said [*mortgagee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*devisee for life*] and his heirs (*f*), that he the said [*mortgagee*] hath not heretofore made, done, executed, or permitted any act, deed, matter, or thing, by means whereof the hereditaments and premises hereby released (*g*), or intended so to be, or any part thereof, are or is charged, incumbered, or in anywise prejudicially affected in title, estate, or otherwise howsoever. IN WITNESS &c.

Covenant by mortgagee that he has not incumbered.

(*f*) This covenant is made with the devisee for life in the character of releasee to uses, and therefore is properly entered into, in correspondence with the *habendum* with him and his *heirs*.

(*g*) "surrendered."

8. OF FREEHOLDS AND COPYHOLDS.

8. RECONVEYANCE (*by Indorsement on Mortgage Deed*) *to the* HEIR *of the Mortgagor, of* FREEHOLD *and* COPYHOLD *Estates* (*a*), *the Mortgage-Money having been some Time since paid off by the Administrator of the Mortgagor.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN the within-named [*mortgagee*], of &c., of the first part; [*administrator of mortgagor*], of &c., administrator of the goods, chattels, and credits of the within-named [*mortgagee*], deceased, of the second part; and [*heir-at-law of mortgagor*], of &c., eldest brother and heir-at-law of the said [*mortgagor*], of the third part (*b*): WHEREAS no surrender was made by the said [*mortgagor*] of the within-mentioned copyhold hereditaments, pursuant to the covenant in that behalf contained in the within-written indenture. AND WHEREAS the said [*mortgagor*] departed this life on or about the year —— without issue, unmarried and intestate, leaving the said [*heir-at-law*], his eldest brother and heir-at-law, who thereupon became entitled to the equity of redemption of the several

Recital that copyholds were not surrendered;

—of death of mortgagor;

What is to be done where mortgages of copyhold are paid off.

(*a*) Where a copyhold estate has been actually surrendered to a mortgagee, the usual practice, when the mortgage is paid off, is to enter an acknowledgment of satisfaction on the court-rolls. If the mortgagee has been admitted under the conditional surrender, he must, provided the money has not been paid until after the surrender has become absolute, surrender to the mortgagor. The surrender in such case would be in the common form, in consideration of the payment of the mortgage debt. It seldom happens, however, that mortgagees of copyholds are admitted, especially if the loan is likely to be temporary, the parties being anxious to avoid subjecting the mortgagor to the expense of the fine, &c. Where, as in the text, the mortgagee has taken from the mortgagor simply a covenant to surrender, no instrument is necessary for the purpose of discharging the lands from the equitable lien, and the mortgagor might be satisfied with having the deed re-delivered to him accompanied with evidence of the payment of the money. In the present instance, a deed being requisite as to the freeholds, a release of the copyholds could, without inconvenience, be added.

(*b*) If the conveyance is to uses to prevent dower, the dower trustee will be the party of the fourth part.

freehold and copyhold estates and hereditaments within mentioned. AND WHEREAS letters of administration of the goods, chattels, and credits of the said [*mortgagor*] were granted by the Prerogative Court of the Archbishop of Canterbury to the said [*administrator*], his father, on the —— day of ——. AND WHEREAS the said [*administrator*], on the —— day of ——, in the year ——, paid off and discharged the principal sum of £2,000, secured by the within-written indenture, and all interest due in respect thereof, as the said [*mortgagee*] doth hereby acknowledge, but no conveyance has yet been executed by the said [*mortgagee*] to the said [*heir*] of the said mortgaged hereditaments. AND WHEREAS the said [*heir*] has requested the said mortgagee to execute to him a conveyance of the freehold hereditaments comprised in the within-written indenture of mortgage, and also a release of the copyhold hereditaments comprised therein, in manner hereinafter expressed, NOW THIS INDENTURE WITNESSETH, that, in compliance with such request, and in consideration of the sum of £—— and all interest thereon having been so paid and satisfied as aforesaid, and also in consideration of 10*s.* now paid by the said [*heir*] to the said [*mortgagee*], the receipt whereof is hereby acknowledged, he the said [*mortgagee*], with the consent and approbation of the said [*administrator*], testified by his executing these presents, *Hath* bargained, sold, released, and by these presents *Doth* &c., unto the said [*heir*], and his heirs, (in the actual possession of the said [*heir*] now being by virtue of a bargain and sale made to him by the said [*mortgagee*]), by indenture, bearing date the day next before the day of the date of these presents, for one year, and by force of the statute made for transferring uses into possession, *All and singular* the freehold messuages, farms, lands, tenements, and hereditaments whatsoever, comprised in the within-written indenture, and which were thereby bargained, sold, and released by the said [*mortgagor*], deceased, to the said [*mortgagee*], his heirs and assigns, *Together* with their and every of their rights, members, and appurtenances; And the reversion and reversions, remainder and remainders, yearly and other rents and profits, of the said premises; And all the estate, right, title, interest, property, possession, benefit, claim, and demand of the said [*mortgagee*], in, to, and out of the said hereditaments, or any part thereof; *Together*

8. OF FREEHOLDS AND COPYHOLDS.

—letters of administration;

—payment of mortgage-money by administrator;

—heir has requested mortgagee to re-convey.

Testatum.

In consideration of principal and interest, mortgagee releases

freehold parcels,

and the reversion,

and all deeds.

8. OF FREEHOLDS AND COPYHOLDS.

with all deeds, evidences, and writings relating to the title of the said hereditaments, in the custody or power of the said [*mortgagee*], as such mortgagee as aforesaid: TO HAVE AND TO HOLD the said messuages, farms, lands, tenements, and all and singular other the hereditaments hereinbefore expressed to be hereby released, with their and every of their rights, members, and appurtenances, unto the said [*heir*], his heirs, and assigns, To THE USE of the said [*heir*], his heirs and assigns, for ever. And the said [*heir*] doth hereby declare, that his widow (if any) shall not be entitled to dower in or out of the said hereditaments. AND THIS INDENTURE FURTHER WITNESSETH, that, for the consideration aforesaid, he the said [*mortgagee*], with the consent and approbation of the said [*administrator*], testified as aforesaid, *Doth*, by these presents, remise, release, and for ever quit-claim unto the said [*heir*], and his heirs, *All and singular* the copyhold or customary messuages, lands, tenements, and hereditaments comprised or mentioned in the within written indenture, *Together* with their and every of their rights, members, and appurtenances; To the end and intent that he the said [*heir*], his heirs and assigns, shall and may from henceforth have, hold, and enjoy the same copyhold or customary lands, tenements, and hereditaments, with the appurtenances, and receive and take the rents and profits thereof, and of every part thereof, to his and their own use, freed and discharged of and from all claims and demands, estate, right, title, and interest whatsoever, of him the said [*mortgagee*], in, to, or out of the same, under and by virtue of the mortgage security contained in the within-written indenture. (*Covenant by mortgagee with heir that he has not incumbered*). IN WITNESS &c.

Habendum.

Further *testatum:*

Mortgagee releases copyholds.

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9. TO ENABLE MORTGAGOR TO RENEW LEASE.

9. RELEASE *by* MORTGAGEES *of a* FREEHOLD LEASE *to enable the* MORTGAGOR *to* SURRENDER *and* TAKE *a* NEW LEASE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*mortgagees*], of &c., of the one part; and [*mortgagor*], of &c., of the other part: WHEREAS (*recite lease*

Recital of lease

from Bishop of W. to mortgagor, for three lives, also indentures of lease and release conveying the premises to the mortgagee for securing £—— and interest). AND WHEREAS the said principal sum of £—— remains owing to the said [*mortgagees*], and some interest thereon. AND WHEREAS one of the cestuis que vie named in the hereinbefore-recited indenture of lease has recently departed this life. AND WHEREAS the said [*mortgagor*] is desirous to surrender the above-recited lease, and to take a new lease of the same premises from the Right Reverend Father in God, [B.], Lord Bishop of [W.], to him the said [*mortgagor*] and his heirs, during the lives of [*intended cestuis que vie*], and the life of the survivor of them, under the same rents and covenants as are expressed and contained in the said recited lease; And the said [*mortgagor*] hath requested the said [*mortgagees*] to convey to him the said leasehold premises, to the intent that he may be enabled to surrender the same, and accept such new lease thereof as aforesaid, And hath agreed with the said [*mortgagees*], that, so soon as such new lease shall be obtained as aforesaid, the premises therein comprised shall be assured to the said [*mortgagees*], to be and remain a security to them for payment of the said sum of £——, and the interest thereon. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, (*and for nominal pecuniary consideration*), They the said [*mortgagees*] *Do* by these presents, according to their estate and interest, but not by way of covenant or warranty, bargain, sell, release, and confirm to the said [*mortgagor*] and his heirs, (in the actual possession &c.), ALL AND SINGULAR the —— and premises comprised in and assured to them the said [*mortgagees*] by the hereinbefore-recited indenture of mortgage, with their and every of their appurtenances, together with the above-recited indenture of lease; TO HAVE AND TO HOLD the said —— and other the premises hereby released, or intended so to be, unto and to the use of the said [*mortgagor*], his heirs and assigns, for and during the lives of the said [*present cestuis que vie*], and the life of the survivor of them, and for all other the estate, term, and interest of the said [*mortgagees*], under or by virtue of the hereinbefore-recited indentures of lease and release, or mortgage: PROVIDED ALWAYS, and these presents are upon this express condition, That if the said [*mortgagor*], or his heirs, shall not, within the space of three calendar months next ensu-

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for lives and mortgage deed, and that one of the lives has dropped;

—that mortgagor is desirous of surrendering lease, and taking a new lease.

Testatum:

Mortgagees release to mortgagor.

Proviso, that, if mortgagor do not surrender lease and ob-

9. TO ENABLE MORTGAGOR TO RENEW LEASE.

tain a new lease and convey same to mortgagees, the present conveyance shall be void.

ing the date hereof, surrender the above-recited lease, and obtain from the said [B.], now Lord Bishop of [W.], or his successors, a good and sufficient lease of the same —— and premises, under the same or as beneficial rents and covenants as are contained in the above-recited lease, or under such rents and covenants as shall be to the satisfaction of the said [*mortgagees*], or the survivor of them, his executors or administrators, for the lives of the said [*intended cestuis que vie*], and the life of the survivor of them, And in case the said [*mortgagor*] or his heirs shall not, within the space of —— days next ensuing the date of such new lease, at his or their own costs and charges, by sufficient assurances in the law, convey and assure to the said [*mortgagees*] and their heirs, or to the survivor of them and his heirs, All and every the —— and premises to be comprised in the said new lease, for all the estate and interest which he the said [*mortgagor*] or his heirs shall have or obtain therein, subject nevertheless to a proviso for making void such conveyance and assurance on payment of the said sum of £—— and interest by the said [*mortgagor*], his heirs, executors, or administrators, unto the said [*mortgagees*], their executors, administrators, or assigns, at the days and times, and in the manner expressed in the hereinbefore-recited proviso for redemption contained in the said indenture of mortgage, then, and in such case, the estate and interest hereby released and conveyed to the said [*mortgagor*] shall cease, determine, and be void to all intents and purposes, and it shall be lawful for the said [*mortgagees*] and their heirs, into the —— and premises hereby released as aforesaid to re-enter, and the same again to have, hold, and enjoy as in their former estate, anything hereinbefore contained to the contrary notwithstanding (*a*); AND the said [*mort-*

Covenant by

(*a*) [If the mortgagor surrenders his estate within the time, and obtains a renewal, but does not convey his renewed estate to the mortgagee, it is conceived that the above proviso cannot so avoid the deed by relation as to revive the former estate, which, being in the mortgagor at the time of his surrender, was, by such surrender, absolutely destroyed, with all conditions attaching upon it: (Finch's Law, 62): but, of course, the mortgagor would be estopped, by the above condition, from disputing the mortgagee's title. If the time named in the condition is allowed to elapse before the surrender is made, any subsequent attempt at renewal, although the mortgagee may countenance it by accepting a conveyance, will be utterly nugatory, for a condition for avoiding a deed cannot, like a condition for re-entry, be waived.]

gagor] doth for himself, his heirs, executors, and administrators, hereby covenant with the said [*mortgagees*], their executors, administrators, and assigns, that he the said [*mortgagor*], or his heirs, shall and will, at his or their own costs and charges, within the space of three calendar months next ensuing the date hereof, surrender to the said [B.], now Lord Bishop of [W.], or to his successors, the said leasehold premises, and procure from the bishop or his successors a new and perfect lease of the same premises to him the said [*mortgagor*], and his heirs, for and during the lives of the said [*intended cestuis que vie*], and the life of the survivor of them, under the same, or as beneficial, rents and covenants as are contained in the said recited indenture of lease; And that he the said [*mortgagor*], or his heirs, shall and will, at the like costs and charges, within the space of —— days next ensuing the date of such new lease, by sufficient assurances in the law, convey and assure the same premises and all his and their estate and interest therein by virtue of such new lease as aforesaid, to the said [*mortgagees*] and their heirs, or to the survivor of them and his heirs, but subject nevertheless to such proviso for redemption thereof, as is expressed and contained in the hereinbefore-recited indenture of mortgage; And that, in the meantime, he the said [*mortgagor*] and his heirs shall and will stand seised of the premises to be comprised in the said new lease, for all such estate and interest as he or they shall have therein, in trust for the said [*mortgagees*], their executors, administrators, and assigns, for the better securing the due payment of the said principal sum of £—— and interest, at the days and times hereinbefore mentioned (*b*). IN WITNESS &c.

9. TO ENABLE MORTGAGOR TO RENEW LEASE.

mortgagor to surrender existing lease, obtain a new lease, and convey same to mortgagees.

(*b*) If the mortgage deed comprised other premises, probably a clause to the following effect, though not essential, would generally be inserted :—

"PROVIDED ALWAYS, and it is hereby declared, that all and every the lands, tenements, and hereditaments, granted and released to the said [*mortgagees*] and their heirs, in and by the above-recited indentures of lease and release, (other than the —— and premises hereby released), shall be and remain subject and liable to the mortgage security created by the hereinbefore-recited indenture of release or mortgage, in as full and ample a manner as if these presents had not been made."

Declaration that other lands comprised in the mortgage shall remain liable to the mortgage.

NOMINATION OF NEW TRUSTEES.

NOMINATION OF NEW TRUSTEES.

Trustee cannot transfer his office unless authorized so to do.

THE effect of a trustee's transferring the trust property to another person, without an express authority, is, that though the property changes hands, the trust does not; for the office, with all its powers and responsibilities, still resides in the person nominated by the author of the trust. No trustee, therefore, ought to be advised to take a step, by which he restricts his control over the property without diminishing his responsibility, every act of his nominee being, in construction of law, the act of himself. If a trustee, without an express authority, (and such an authority the powers as ordinarily framed very seldom confer), transfers the trust property to his co-trustee, intending to retire from the trust, he is responsible for all the consequences of this unauthorized act; (assuming, of course, that the *cestuis que trust* have not bound themselves by assent); and, therefore, if the co-trustee, who is thus invested with the sole power over the trust property, abuses that power by dealing improperly with the funds, the trustee who has enabled him to do so is answerable. (*Wilkinson* v. *Parry*, 4 Russell, 272, stated *post*, p. 510. See also *Chalmer* v. *Bradley*, 1 Jac. & W. 68).

It is, therefore, especially incumbent, as well on trustees who continue in, as on those who retire from, office, to see that the powers under which the new trustees are appointed are duly complied with; for so far only as this is done is the act exonerative from any existing liability.

Every well-drawn deed of settlement and will creating trusts which may by possibility endure beyond a very short period, contains powers enabling any of the trustees for the time being to resign the trust, and also provisions for supplying, by a fresh nomination, the vacancies occasioned by such resignation, or by the death or incapacity of any trustee.

Remarks upon powers of appointing new trustees in set-

The modes of limiting such powers are various: sometimes they are vested in the continuing, sometimes in the retiring trustee; and in the case of settlements and wills, the power is frequently given to, or to

be exercised with the consent of, the persons beneficially entitled; indeed, it is obviously reasonable, that these persons should have a voice in the selection of those who are to be entrusted with their property.

It appears to be not quite a matter of course to empower the trustees to supply, by their own nomination, vacancies in the office in *any* event; and unquestionably it ought never to be done while any person beneficially interested is competent to exercise the power. When the trustees are so empowered, a subordinate question is—whether the power shall be vested in the surviving or continuing trustee, or in the retiring, or the representatives of the deceased, trustee. On behalf of the surviving or continuing trustee it may be reasonably urged, that he should have some share in the nomination of one who is to be his coadjutor in the trust; while, on the other hand, it does not seem quite right to enable him to fill the trust with his own nominees, as by so doing one of the objects of having a plurality of persons in the trust, namely, that one should be a check upon the other, may be defeated; since the continuing trustee, if he were dishonestly disposed, would select for his coadjutor a person who would further his designs. Perhaps, the best mode of meeting the difficulty is to give the power to both the retiring and continuing trustees, or such of them as shall think proper to exercise it; but this is a less eligible plan when the power relates to land, than when it affects personalty only; because, in deducing the title through the newly-appointed trustees, it would be necessary to prove that all the non-concurring donees, who had the option of joining in the nomination, had declined to do so.

These observations, too, are of less force, where no principal sum is placed at the disposal of the trustees; and the consequence, therefore, of any malversation would be so inconsiderable, and so certain of detection, as to render any attempt of the kind extremely improbable. In such cases the principal object is to provide for every possible event which can create a vacancy. If the power was certain to be exercised in every single vacancy, it would be sufficient to provide for the death, retirement, or incapacity of *one* trustee; but, as the remaining trustee may die, or himself become incapable, without having exercised the power, it is necessary to extend the provision to the death, incapacity, or refusal (for a retiring trustee sometimes refuses to make such an appointment) of both.

A few particulars may be suggested, in which, it is conceived, the powers in common use for these purposes might be conveniently enlarged. In the first place, they often do not provide for the event of a trustee refusing to act *ab initio*, extending only to the case of

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a trustee who *has* assumed the trusts, declining to *continue* to act. The former event, indeed, can rarely happen in regard to settlements, as the consent of the trustees will, in general, have been obtained before they are named, whether originally or under a power for that purpose; and they can (and always ought to) be made to execute the deed, in order to testify their acceptance of the trust. In the case of wills, however, the trustees are not called upon to act, and often are not acquainted with the nomination, until the death of the testator, when it frequently occurs that they declined the office. That the power of appointing new trustees, in its common form, does not apply to such a case, was decided in *Sharp* v. *Sharp*, 2 Barn. & Ald. 405, where the power in a will provided, that, in case either of his (the testator's) trustees should happen to die, or desire to be discharged from, or neglect, or refuse, or become incapable to act in, the trust thereby in them reposed, before such trust should be fully performed or determined, in such case it should be lawful for the *survivors or survivor of the trustees so acting in the trust wherein such vacancy* should happen as aforesaid, (there were two sets of trustees), or the executors or administrators of the last surviving trustee, by any writing, &c., to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, desiring to be discharged, or refusing or becoming incapable to act as aforesaid. On the death of the testator, both the trustees refused to act; and conveyed the trust estate to two new trustees of their own nomination; and one of the questions was —Whether this was a due exercise of the power (*a*). The Court held that it was not. Mr. Justice *Bayley* said—"I apprehend, that, under the words of this power, the testator meant by the word 'acting,' to designate those who had taken upon themselves to perform some of the trusts mentioned in the will; and that he did not contemplate one who, *in limine*, refused to act, and it seems to me, that a person who does so refuse, cannot be considered as acting in any of the trusts. Then the word 'survivor' must mean the continuing trustee, as contradistinguished both from those who might refuse to act and those who might be desirous to discontinue acting. For these reasons, it seems to me, that the power does not apply to a case where both those trustees had refused to act in the first instance."

Effect of trustees declining to act *ab initio*.

(*a*) [The question arose in an action against a purchaser from the new trustees for non-performance of the contract. It scarcely needs to be said, that, though the nomination of new trustees be void, the conveyance to them from the old trustees will pass the legal estate, with all its *legal* incidents. *Doe* d. *Read* v. *Godwin*, 1 D. & R. 259: *White* v. *Parker*, 1 Scott, 542.]

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[In the above case the trustees, by the act of conveying the trust estate, shewed that they had accepted the trusts. (See *Urch* v. *Walker*, 3 Myl. & Cr. 702). The contingency, therefore, was one contemplated by the power, which was defective by not defining the party to exercise it. The difficulty in such a case might be got over by means of two successive nominations; thus, if A., B., and C. are named as trustees, and desire to act in the trusts only so far as to appoint other trustees in their room, A. and B. may retire, and C. may nominate D. and E. in their room, then C. may retire, and D. and E. nominate F. in his room.]

As to trustee's relinquishing his trust to his co-trustee.

Another defect in the powers in question is, that they only enable the donee to supply vacancies occasioned by death, resignation, &c., and do not authorize any trustee to retire unless another is appointed. Thus, where a marriage settlement of stock reserved a power to the wife during her life, and after her death to the guardians of the children, to appoint a new trustee in the place of any who should die or desire to retire—N., one of the trustees, being desirous to retire, S., a new trustee, was appointed, who, after he had accepted the trust by executing the deed, but before he had acted, became also desirous to retire; when a deed was executed by the wife, appointing P., the original continuing trustee, *as the sole trustee;* S. was made a party to, but did not execute, this deed; N., the original retiring trustee, transferred the stock to P., the original continuing trustee, alone, who afterwards sold it, and applied the proceeds in a manner not authorized by the trust. In a suit against N. by the children of the marriage, it was objected that S. was implicated in the breach of trust, and therefore ought to have been made a party in the suit; but the Master of the Rolls overruled this objection, referring to the answer of N., in which it was admitted that S. had retired from the trust; and stating, that it would be an imprudent act in S., if he had executed the deed appointing the sole trustee, and that, under the circumstances, there could be no relief against S. With respect to the defendant, (the original trustee), his Honor observed—"By the terms of the trust deed, under which he has acted, he was bound, upon declining the trust, to transfer the trust property to the continuing trustee *and a new trustee to be appointed in his place;* and nothing could relieve him from that obligation but the consent of all parties interested under the trust. It was not possible to obtain such consent here, because there were infants who were not capable of consenting, and, therefore, could not be deprived of that security which they derived from having the trust property, upon N.'s declining the trust, confided to

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the care and integrity of two new trustees, instead of one. I am compelled, therefore, though with reluctance, to declare my opinion, that N. as well as P. is liable, as it regards the infants, for any loss to their shares of the property, which may be the consequence of the transfer of the stock by P." *Wilkinson* v. *Parry*, 4 Russ. 274.

Such powers are also frequently defective in not authorizing any new trustee to be appointed unless in the room of a deceased or retiring trustee; so that no diminution of, or addition to, the number of trustees can be made: though it sometimes occurs, that, on an emergency, it is desirable that a trustee should be removed before a successor can conveniently be appointed; and still more frequently do circumstances render it expedient to add to the original number of trustees, as where that number is inconveniently small, or the donee wishes to introduce other persons in the trust, when from delicacy he is reluctant to request the existing trustees to retire. Where a single trustee is appointed, a power of increasing the number ought never to be omitted.

[By a settlement in the Scotch form, estates were vested in two trustees, with power for the settlor to appoint any other persons he thought proper to be trustees; and it was directed that two trustees should be a quorum; and each of the trustees named in the settlement, or to be named by the settlor, who should accept the trusts, was empowered to nominate any other person he pleased to succeed himself in the trust after his decease; and the said nominees, also, were empowered to name other persons to succeed them respectively, after their deaths. Only one of the trustees accepted the trusts, and he, by will, appointed three persons to succeed him: it was held that the appointment was good. *Sands* v. *Nugee*, 8 Sim. 130.]

It should be observed, that, where, agreeably to the suggestion first made, the power is extended to the event of a trustee renouncing the trust *ab origine*, it is advisable to shew, by unequivocal expressions, that the extension of the power to this event does not render it obligatory on the donee of the power to supply the vacancy. The Editor is led to this remark by a case which came under his observation, in which a gentleman of opulence left a will, containing trusts that were likely to be attended with so much trouble, that one of the executors and trustees refused to prove the will, or act in the trusts, though this refusal deprived him of a legacy of no less than £1,000, which the testator had annexed to the office. The will contained a power authorizing the trustees, in case of a vacancy in the trust by *renunciation*, death, &c., to appoint another

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trustee. The difficulties of the trust, which led the nominated trustee to decline the office, of course rendered others unwilling to supply his place, and no person could be induced to do so. The remaining trustees proceeded in the execution of their trust alone, and sold part of the property. A purchaser objected to the title on the ground that the power rendered it incumbent on the donees of the power to appoint another trustee in the room of the renouncing trustee. The objection, being found untenable, was ultimately abandoned; but it seems advisable to keep it in view, in framing such powers.

Whether trustees are competent to act after vacancies.

The point was adverted to in the case of *Doe* d. *Read* v. *Godwin*, 1 Dowl. & Ryl. 259; where, in an act of Parliament, enabling five trustees to dispose of certain houses by lottery, it was enacted, that if any of the trustees should die before the drawing of the lotteries, and the conveyance of the prizes, the survivors or survivor should and were thereby required to appoint a new trustee or new trustees. It was objected to the validity of a conveyance by four surviving of the five trustees, that it was imperative on the survivors to fill up the vacancy occasioned by the death of the deceased trustee, before they could execute a conveyance; but the objection was overruled. Lord Chief Justice *Abbott* observed, that the directions of the statute, in this respect, were analogous to the powers contained in a private settlement to fill up the vacancies occasioned by death in the execution of the trust; his Lordship considering, that this construction was fortified by a subsequent statute, amending the act in question, in which it was declared, that, if any fortunate tickets, drawn in any of the lotteries, should not be produced to the said five trustees, *or the survivors or survivor of them*, or such other persons as might be appointed in pursuance of the therein-recited act, then the said five trustees, *or the survivors or survivor* of them, should immediately advertise, &c. Mr. Justice *Bayley* was of opinion that the clause did not apply, unless the trustee's death had taken place before the drawing of the lotteries, which had not been proved; but, at all events, he was of opinion that *this was a directory clause only*, and that the conveyance clearly operated upon the legal title, to which only, in a Court of law, they could pay any regard. Mr. Justice *Best* concurred on both points.

Remarks upon *Doe* v. *Godwin*.

This case, it must be admitted, *decided* nothing more than that the conveyance by the surviving trustees carried the legal title, though it indicates the opinion of two of the learned bench, that clauses of this nature are directory only. [Where it appeared from the terms of a settlement to have been the intention of the parties

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that there should at all times be two trustees of the property comprised in it, the appointment of a single trustee by the original trustee, and the transfer of the trust property to him, was held a breach of trust, rendering the original trustee liable for the acts of his nominee. *Hulme* v. *Hulme*, 2 Myl. & K. 682.]

Acts of legal dominion not restrained in equity, on account of power of new appointment not having been exercised.

It seems, that the exercise of acts of dominion by the surviving trustees or trustee, or his representatives, by virtue of the legal title, will not be restrained in equity, on the mere ground that a power of supplying vacancies in the trust has been allowed to lapse, without any attempt to exercise it. Thus, in the case of *The Attorney-General* v. *Bishop of Litchfield*, 5 Ves. 825, where an advowson had been devised to eight persons, in trust, to present a clerk as often as the church should be void, with a direction that the last three survivors should make choice of new trustees; the whole died without exercising the power; and Lord *Rosslyn* refused to restrain by injunction a presentation by the heir of the surviving trustee under the legal title. Of course, the power of appointing new trustees was gone, by the neglect of the three to exercise it. And this serves to introduce the observation, that though it seems pretty evident that such a power reserved to surviving trustees, *when they are reduced to a certain number*, is not exercisable by any less number of survivors, *i. e. after* they have in the progress of reduction passed the specified number; yet, it is not equally evident whether the power is capable of being exercised *before* they reach that number. A case exactly applying to this point (but in a book of equivocal authority) is *Doe* d. *Dupleix* v. *Roe*, 1 Anst. 86; where a deed of conveyance of a Wesleyan chapel to twenty-five trustees contained a clause directing, that when, by death or otherwise, the number of the trustees should be reduced to fifteen, then the remaining fifteen trustees, or the majority of them, should proceed to elect &c., so as to make up the complement of twenty-five. When the number had been reduced to seventeen, twelve of that number (the other five dissenting) elected eight new trustees; and it was held, that this was within the scope of their power. The Chief Baron (*Eyre*) observed—"The general intention of the trust deed clearly is, that there shall be a succession of trustees, on the death of those originally created; and the period of their being reduced to fifteen is that at which they are *compellable* to fill up their numbers; *not but what they may do it sooner*" (*b*).

Whether power can be exercised before trustees are reduced to specified number.

(*b*) Some persons enrol deeds of conveyance to new trustees of dissenting chapels, or other charitable institutions, conceiving that they are within

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This is certainly the most convenient construction; for, otherwise, the occurrence of two deaths almost simultaneously might place it out of the power of the donees to make the new appointment.

As to the discharge of retiring trustees.

It rarely happens that trustees who retire under a power can have a complete discharge for past transactions; as the having recourse to the power supposes the want of an absolute interest in the *cestui que trust*, which would alike incapacitate them from releasing the trustee; but the new appointment, if effectual, will prevent him from incurring further liability; and, as the evidence of exemption from continuing liability is the instrument effecting such new appointment, it seems proper that he should have a counterpart.

Right of trustee to be discharged from his office.

[A trustee may retire from his office at his own pleasure, and at the costs of the trust estate, if there is a power in the instrument creating the trusts authorizing the appointment of new trustees on such retirement; but if there is no such power, and a trustee, by retiring, renders a suit necessary for the appointment of a new trustee, he will not be allowed his costs unless he assigns a sufficient reason for his retirement. *Howard* v. *Rhodes*, 1 Kee. 581. In a subsequent case, the trustees of a marriage settlement filed a bill to be discharged, in consequence of the acts of the tenant for life in repeatedly charging the trust estates and funds with annuities and other incumbrances, thus rendering them responsible for the due application of the income to the payment of such incumbrances, contrary to their intention when they accepted the trusts—which was only to manage the property for the tenant for life and his family. The Master of the Rolls directed that the costs of the suit should be borne neither by the trustees nor by the trust estate, but by the tenant for life. *Coventry* v. *Coventry*, 1 Kee. 758.]

Transfer of stock to a wrong name.

[Where trust stock had been transferred into the name of *Thomas* L. by mistake for *James* L., it was held that Thomas L. was justified in requiring the sanction of a Court of Equity before he joined in transferring the stock to the name of the intended trustee, notwithstanding every explanation was given, and an indemnity offered. *Dunkin* v. *Ward*, at the Rolls, May 26, 1837, MS. When the *cestui que trust* appoints a new trustee in favour of certain objects, the old trustee is bound to convey to the new trustee, without the concurrence of those objects. *Angier* v. *Stannard*, 3 Myl. & Kee. 566.]

Proceedings of the Court of

The Court of Chancery will interfere to prevent the power of appointing new trustees from being exercised in an improper manner,

the stat. 9 Geo. 2, c. 36; but the notion is quite groundless. That statute only applies to instruments *devoting* land to charity.

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Chancery in regard to the appointment of new trustees.

and it will not permit the power to be exercised at all by the donee, pending a suit for establishing the trusts, except under the direction of the court; *Webb* v. *Earl of Shaftesbury*, 7 Ves. 480; or without ascertaining by the usual reference to the Master the fitness of the new nominees. ——— v. *Robarts*, 1 Jac. & W. 251. If the newly appointed trustee is by the terms of the instrument creating the trust to have a compensation for his trouble, the court would be, and the donee ought to be, the more careful in the selection of a proper person, always remembering that powers of this description are given for the benefit of the estate, and not the individuals nominating or nominated. See *Webb* v. *Earl of Shaftesbury*, 7 Ves. 480. Gross misconduct, incapacity from infirmity or absence, and refusal to act, are, in general, the grounds upon which the court will remove trustees. See *Travell* v. *Danvers*, Finch, 380; *Moggeridge* v. *Grey*, Nels. 42; *City of Coventry* v. *Attorney-General*, 2 B. P. C. 236; *Benett* v. *Honywood*, Amb. 710; *Uvedale* v. *Ettrick*, 2 Ch. Cas. 26; *O'Keefe* v. *Callagham*, 1 Atk. 17; *Millard* v. *Eyre*, 1 Ves. jun. 94; *Buchanan* v. *Hamilton*, 5 Ves. 722; Willis on Trustees, 199. Marriage with a foreigner has been held to be a ground for removing a female trustee. *Lake* v. *De Lambert*, 4 Ves. 592. In ——— v. *Osborne*, 6 Ves. 455, on an application by a devisee in trust, against whom a creditors' suit had been instituted, for a reference to the Master to appoint a new trustee and settle a release, on the ground that he had never acted, and was of advanced age, Lord *Eldon* referred it to the Master to look through the proceedings, to see whether the defendant remained accountable for any acts done by him as trustee, and, if not, to settle a release. It may be observed, that where new trustees are appointed under a suit, the court will not insert a clause in the conveyance enabling the new trustees to appoint others in their stead, there being no provision to that effect in the trust deed. *Bayley* v. *Mansell*, 4 Mad. 226. (See further, as to the appointment of new trustees by the court of Chancery, the 11 Geo. 4 & 1 Will. 4, c. 60, s. 22, *ante*, p. 431).

Right of *cestui que trust* to have trustee removed.

As to rendering trustees removable on bankruptcy and insolvency.

It seldom occurs that bankruptcy or insolvency is made a disqualification of, or a cause for removing a trustee, but the nature of the confidence reposed in trustees is often such as to render it not quite fit that persons in this situation should continue to hold the office. Care should be taken, however, that the acts of a trustee, until his removal, be not made liable to be impeached by anterior bankruptcy, &c., so as to affect third persons without notice. The general Bankrupt Act, 6 Geo. 4, c. 16, s. 79, provides, "That

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if any bankrupt shall, as trustee, be seised, possessed of, or entitled to, either alone or jointly, any real or personal estate, or any interest secured upon or arising out of the same, or shall have standing in his name, as trustee, either alone or jointly, any government stock, funds, or annuities, or any of the stock of any public company, either in England, Scotland, or Ireland, it shall be lawful for the Lord Chancellor, on the petition of the person or persons entitled in possession to the receipt of the rents, issues, and profits, dividends, interest, or produce thereof, on due notice given to all other persons (if any) interested therein, to order the assignees, and all persons whose act or consent thereto is necessary, to convey, assign, or transfer the said estate, interest, stock, funds, or annuities, to such person or persons as the Lord Chancellor shall think fit, upon the same trusts as the said estate, interest, stock, funds, or annuities, were subject to before the bankruptcy, or such of them as shall be then subsisting and capable of taking effect; and also to receive and pay over the rents, issues, and profits, dividends, interest, or produce thereof, as the Lord Chancellor shall direct. [A reference, though usual, is not necessary under this clause, and the smallness of the trust-fund will always induce the court to dispense with it. *Ex parte Inkersole*, 2 Gl. & Ja. 230: *Ex parte Whish, Re Sandys*, 2 Mon. & A. 214: *Ex parte Buffery*, 2 Dea. & C. 576: *Ex parte Walton*, 2 Mon. & A. 242. The assignees, disclaiming all interest in the property, need not join in the conveyance. *Ex parte Walton.*]

See a comprehensive form of the power to appoint new trustees of a will, providing for the occurrence of vacancies in the testator's life-time, and for the bankruptcy or insolvency of any trustees, *infra*, Vol. 10, p. 363, 1st ed.

Some inaccuracies in mode of framing powers of appointing new trustees pointed out.

In framing deeds appointing new trustees, difficulty often occurs from the ambiguous and inaccurate language of the power which it is proposed to exercise, such powers being often not framed with the care and attention which their importance demands; and numerous are the questions which arise from inaccuracies of this nature; for instance, a will or settlement sometimes constitutes several classes of trustees, for various purposes, and yet the framer of the power in question, losing sight of this classification, vests it in the surviving or continuing trustee or trustees for the time being,—thereby raising the question, whether each class is to supply vacancies in its own body, or the trustees of other classes are to have a voice in the nomination. Again, it is not unusual to find, that the power is reserved to the heirs, exe-

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cutors, or administrators of a deceased trustee, leaving it in doubt whether the power is to be exercised by the heir, as to the real estate, and by the executors or administrators, as to the personal estate; or whether both classes of representatives must concur; or whether it may not be exercised, as to the entire property, by either the real or personal representative. Another case of doubt and inconvenience arises from the power failing to indicate, whether the donee is to be at liberty partially to supply vacancies; for instance, suppose there were two trustees, A. and B.; A. dies, and B. retires; could the donee appoint C. as a new trustee in the room of B., leaving the vacancy occasioned by the death of A. unsupplied? It is presumed that, unless the contrary appears, the donee must make up the full complement of trustees before any of the new nominees are competent to act.

As the procedure under the clause in Sir Edward Sugden's Act, (1 Will. 4, c. 60, s. 22), stated *ante*, p. 431, enabling the Court of Chancery to appoint new trustees upon petition, where the instrument creating the trust contains no such power, is attended with considerable expense, it is still desirable to frame powers so as to avoid the necessity of resorting to it.

NOMINATION OF NEW TRUSTEES.

PRECEDENTS.

1. [NOMINATION *by Writing not under Seal of a* NEW TRUSTEE, *under a Power contained in a Settlement of* MONEY *in the* FUNDS, (*on which it is indorsed*).

1. NOT UNDER SEAL; STOCK.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, the within-named [*widow*], now the widow and relict of the within-named [*deceased husband*], deceased, send greeting: WHEREAS, soon after the solemnization of the within-written indenture, the marriage between me and the said [*deceased husband*] was solemnized. AND WHEREAS the said [*deceased husband*] departed this life some time in the year ——, and is buried, &c. AND WHEREAS the within-named [*retiring trustee*] is desirous of being discharged from the trusts reposed in him by the within-written indenture. NOW KNOW YE, that I, the said [*widow*], in exercise of the power or authority to me given by the within-written indenture, and of every other power or authority enabling me hereto, Do by this writing, signed with my hand, nominate and appoint [*new trustee*], of &c., to be a trustee in the place and stead of the said [*retiring trustee*], and to act in conjunction with the within-named [*continuing trustee*], in such of the trusts within expressed or contained of or concerning the within-mentioned trust-moneys, stocks, funds, or securities, as are now subsisting or capable of taking effect. IN WITNESS &c. (*a*).

Exordium.

Recital of marriage and death of husband;

—trustee's wish to retire.

Testatum:

Donee of power appoints new trustee.

ACKNOWLEDGMENT *by New Trustees, that the Stock has been transferred into their joint names.*

ACKNOWLEDGMENT OF TRANSFER OF STOCK.

BE IT REMEMBERED, that, on the —— day of ——, the sum of £——, Three Pounds per centum Consolidated Bank

(*a*) [This instrument, not being a deed, requires no stamp.]

1. NOT UNDER SEAL; STOCK.

Annuities, (being the stock in which the within-mentioned trust-property is now invested), was transferred into and is now standing in the joint names of us [*trustees*]; As WITNESS our hands, this —— day of ——.

(Signed) [*Continuing Trustee.*]
[*New Trustee.*]

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2. WHERE TRUST RELATES TO MONEY IN THE FUNDS.

2. NOMINATION *of a* NEW TRUSTEE *in the Room of a deceased* TRUSTEE, *under a Power in a* MARRIAGE SETTLEMENT (*on which it is indorsed*); *and* DECLARATION *of* TRUST *by the* CONTINUING *and* NEW TRUSTEES, *as to* STOCK *in the Public Funds transferred to them.* (*Variation where the Transfer is to follow the Execution of the Deed*).

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN the within-named [*donee of the power*], of the first part; [*new trustee*], of &c., of the second part; and the within-named [*continuing trustee*], of the third part;

Recital of death of one, and that donee of power is desirous of appointing a new trustee.

WHEREAS the within-named [*deceased trustee*] has lately departed this life, and the said [*donee*], in pursuance of the power within contained in this behalf, is desirous of appointing the said [*new trustee*] to be a new trustee in his room, jointly with the said [*continuing trustee*], of the within-written indenture.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said desire, and in exercise and execution of the power and authority in this behalf reserved to the said [*donee*] in and by the within-written indenture of settlement, and of all other powers enabling her thereunto, she, the said [*donee*], *Doth*, by these presents (*a*), nominate and appoint the said [*new trustee*] to be a trustee in the room and place of the said [*deceased trustee*], deceased, jointly with the said [*continuing*

Donee nominates new trustee.

Mode of execution.

(*a*) If the power requires any particular mode of execution, say—"sealed and delivered by the said [*donee*] in the presence of and attested by, two credible witnesses, as required by the power within contained" (*or otherwise, as the case may be*).

trustee], or otherwise, upon and for all the trusts and purposes, and with all the powers and authorities expressed and contained in and by the within-written indenture; or upon, for, and with such and so many of the same trusts, purposes, powers, and authorities as are now subsisting, undetermined, and capable of taking effect; And the said [*new trustee*] *Doth* hereby testify and declare his acceptance of the said nomination and appointment: AND WHEREAS the funds and property which are now subject to the trusts of the within-written indenture, consist of £1,500, 3*l.* per centum Consolidated Annuities, and £800, New 3*l.* 10*s.* per centum Annuities, respectively: AND WHEREAS, in contemplation of the nomination and appointment hereinbefore contained, the said [*continuing trustee*] hath, at the request of the said [*donee*], previously to the execution of these presents (*b*), transferred the said £1,500, 3*l.* per centum Consolidated Annuities, and £800, New 3*l.* 10*s.* per centum Annuities, in the books of the Governor and Company of the Bank of England, into the joint names of the said [*continuing trustee*], and [*new trustee*], as they respectively do hereby acknowledge (*c*). NOW THIS INDENTURE FURTHER WITNESSETH, that, in consideration and by reason of the premises, it is hereby declared, that they the said [*continuing trustee*] and [*new trustee*], and the survivor of them, and the executors or administrators of such survivor, shall and will henceforth and at all times hereafter (*d*) stand, and be possessed

2. WHERE TRUST RELATES TO MONEY IN THE FUNDS.

New trustee accepts.

Recital, that trust funds had been transferred into the names of old and new trustee.

Further *testatum*:

Declaration of trust as to funds.

(*b*) In strictness, the transfer of the funds ought to follow, instead of being made, as in the present case, to precede the appointment of the new trustee. The advantage of the latter mode is, that the deed contains an admission by the trustees of the fund having been transferred into their names. If, however, the continuing trustee requires (as he reasonably may) that the deed of appointment should be executed before he transfers the fund, the precedent may be varied as suggested in the subsequent notes.

Suggestion as to the transfer of the funds.

(*c*) If, as suggested *supra*, the fund is not to be transferred until after the execution of the deed of appointment, instead of the last recital in the text, say—

"And it is intended that the same respectively shall, immediately after the execution of these presents, be transferred into the joint names of the said [*continuing trustee*] and [*new trustee*]."

Variations where the fund is not transferred until after the execution of the deed.

(*d*) If the fund is not to be transferred until after the execution of

2. WHERE TRUST RELATES TO MONEY IN THE FUNDS.

of, and interested in the £1,500, 3*l.* per centum Consolidated Annuities, and £800, New 3*l.* 10*s.* per centum Annuities, so respectively transferred into and now standing in the names of them the said [*continuing trustee*] and [*new trustee*] in the books of the Governor and Company of the Bank of England, as aforesaid, and the dividends, interest, and annual produce to arise therefrom respectively, and all other the stocks, funds, and securities on which the moneys to arise from the said annuities respectively, shall from time to time happen to be invested, and the dividends, interest, and annual produce arising from the last-mentioned stocks, funds, and securities, as aforesaid; *Upon the trusts*, and for the intents and purposes expressed and declared in and by the within-written indenture, of and concerning the trust moneys, stocks, funds, and securities thereby settled, or such and so many of the same trusts, intents, and purposes, as are now subsisting, undetermined, and capable of taking effect, and upon or for no other trust, intent, or purpose whatsoever (*e*). IN WITNESS &c.

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the deed of appointment, omit the words "henceforth and at all times hereafter," here introduced, and proceed as follows:—

"shall and will stand and be possessed of the said £1,500, &c., when the same respectively shall have been transferred into the names of the said" (*ut supra*).

(*e*) If the funds are not to be transferred until after the execution of the deed, add the following covenant:—

Covenant by continuing trustee to transfer funds.

"And the said [*continuing trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*new trustee*], his executors and administrators, that, immediately after the execution of these presents, the said [*continuing trustee*] shall and will, at the costs of the said trust estate, transfer into the joint names of the said [*continuing trustee*] and [*new trustee*], in the proper books at the Bank of England, the said £1,500, 3*l.* per centum Consolidated Annuities, and £800, New 3*l.* 10*s.* per centum Annuities, respectively, to be held by them upon the trusts, and for the intents and purposes, hereinbefore expressed and declared concerning the same."

3. DEED *of* APPOINTMENT *of a* NEW TRUSTEE *in the Room of a* RETIRING TRUSTEE, *under a Power in a Will, where the Property consists of* MONEY INVESTED *on* MORTGAGE (*a*) *and in the* FUNDS; *and* DECLARATION *of Trust by Continuing and New Trustee.*

3. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

THIS INDENTURE, made the —— day of ——, BETWEEN [*retiring trustee*], of &c., of the first part; [*donee of power*], of &c., of the second part; [*new trustee*], of &c., of the third part; and [*continuing trustee*], of &c., and the said [*new trustee*], of the fourth part: WHEREAS [*testator*], of &c., deceased, in and by his last will and testament in writing, bearing date on or about the —— day of ——, devised and bequeathed all his real and personal estate whatsoever and wheresoever to the said [*trustees*], their heirs, executors, administrators, and assigns, upon trust to sell and convert the same into money, and invest the produce thereof in real or government securities as therein mentioned; and the said testator declared that his said trustees should stand possessed of such securities upon certain trusts in the said will mentioned; and he moreover declared (*set forth power of changing trustees verbatim*); and the said testator appointed the said [*trustees*] executors of his said will: AND WHEREAS the said testator departed this life without having revoked or altered his said will, which was duly proved by the executors therein named in the —— court of —— on the —— day of ——: AND WHEREAS the said trustees, in execution of their said trust, sold and converted into money the whole of their said testator's real and personal estate, and, out of the moneys arising therefrom, they lent and advanced the sum of £——, at interest, to [*mortgagor*], of &c., on security of certain hereditaments situate in the parish of ——, in the county of ——, and which, by indentures of lease and release, bearing date &c., where conveyed and assured unto and to the use of the said [*trustees*], their heirs

Parties.

Recital of will;

—of power to appoint new trustees;

—of death of testator;

(*a*) This precedent is made to correspond with the precedent *ante*, p. 377.

3. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

and assigns, for securing the said principal sum and interest; and with the residue of the said trust moneys, the said [*trustees*] purchased in their names the sum of £——, 3*l.* per centum Consolidated Annuities: AND WHEREAS the sum of £—— so lent and advanced on mortgage as aforesaid, and the £——, 3*l.* per centum Consolidated Annuities so purchased by them, constitute the whole of the funds and property which are subject to the trusts of the hereinbefore-recited will of the said [*testator*] deceased: AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trusts of the hereinbefore-recited will, as he doth hereby testify and declare; And the said [*donee*] hath therefore requested the said [*new trustee*] to become a trustee in the room and place of the said [*retiring trustee*], which the said [*new trustee*] hath consented and agreed to do: AND WHEREAS, by indentures of lease and release and assignment, already prepared, and intended to be executed immediately after the execution of these presents, the lease being intended to bear date the day next before the day of the date of these presents, and the release and assignment even date with these presents, respectively made between &c., and by a deed-poll of assignment indorsed upon the said indenture of release and assignment, *All and singular* the hereditaments so conveyed and assured unto the said [*trustees*] by way of mortgage, as hereinbefore recited, and the principal sum of £——, and interest, secured thereon, as aforesaid, and all securities for the same, are, or are expressed or intended to be conveyed, assigned, or otherwise assured unto, or otherwise become vested in, the said [*continuing trustee*] and [*new trustee*], their heirs, executors, and administrators: AND WHEREAS the said [*retiring trustee*] and [*continuing trustee*] have consented and agreed (*b*), immediately after the execution of these presents, at the costs of the said trust estate, to transfer the £——, 3*l.* per Centum Consolidated Annuities so purchased by the said [*retiring trustee*] and [*continuing trustee*], in execution of their trust as aforesaid, into the joint names of the said [*continuing trustee*], and [*new trustee*] in the proper books at the Bank of England. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, the said [*donee*], by virtue

—of proposed change of trustees;

—of transfer of mortgage;

—intended transfer of stock into the names of continuing and new trustees;

Testatum:

(*b*) It is clear that these words would create a covenant on which an action might be sustained without any more formal covenant.

and in execution of the power and authority given and reserved to her by the hereinbefore recited will of the said [*testator*], deceased, and of every other power and authority enabling her the said [*donee*] in this behalf, *Doth* by these presents, sealed and delivered by her in the presence of and attested by two credible witnesses, nominate and appoint the said [*new trustee*], in the room and stead of the said [*retiring trustee*] (*c*), to be a trustee of the will of the said [*testator*], to carry on and execute jointly with the said [*continuing trustee*], or otherwise, such and so many of the trusts, powers, authorities, ends, and purposes expressed and declared in and by the same will as are now subsisting, undetermined, and capable of taking effect. AND THIS INDENTURE FURTHER WITNESSETH, that the said [*continuing trustee*] and [*new trustee*] do hereby testify, acknowledge, and declare that they the said [*continuing trustee*] and [*new trustee*], and the survivor of them, and the heirs, executors or administrators of such survivor, shall and will stand and be seised and possessed of, and interested in, the said hereditaments, principal sum and interest, and other the premises so mentioned to be conveyed and assigned unto and vested in them in and by the hereinbefore-recited indentures of lease and release and assignment, the release and assignment bearing even date with these presents, and also of and in the £——, 3*l.* per centum Consolidated Annuities, so intended to be transferred into the names of the said [*continuing and new trustees*] as hereinbefore recited, when the same hereditaments, principal sum and interest, and annuities respectively, shall have been so conveyed, assigned, and transferred as aforesaid, upon the

3. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

Donee, in execution of power, appoints new trustee.

Further *testatum*.

Continuing and new trustees declare trusts as to mortgage-moneys and three per cent. consols.

(*c*) It seems proper that a counterpart of the present deed should be placed in the custody of the retiring trustee as evidence of his discharge from continuing liability. With respect to antecedent transactions, he can have no effectual release, unless the will contains an express authority to the donee of the power to give it, because, where powers of this sort are executed, it almost invariably happens that the eventual owners of the property under the trusts are either not in *esse* or minors.

If the deed appointing the new trustee is indorsed upon the original trust-deed, the retiring trustee may dispense with a counterpart, because the deed which creates his liability cannot be produced without exhibiting on its back evidence of his discharge. Besides, a detached counterpart of the indorsed deed, not having any explanatory recitals, would be scarcely intelligible.

As to giving the retiring trustee a counterpart.

3. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

trusts, and for the intents and purposes, and under and subject to the powers and declarations expressed and contained in and by the hereinbefore-recited will of the said [*testator*], deceased, or such and so many of the same trusts, intents, and purposes, powers and declarations, as are now subsisting, undetermined, and capable of taking effect, and upon or for no other trust, intent, or purpose whatsoever. IN WITNESS &c.

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4. BY SURVIVING TRUSTEES, WITH CONVEYANCE OF REAL AND PERSONAL ESTATE.

4. APPOINTMENT *of New Trustees by two* SURVIVING TRUSTEES *of a Will and* CONVEYANCE (*conjointly with the next Precedent*) *vesting* FREEHOLD *and* LEASEHOLD ESTATES *in the* CONTINUING *and* NEW TRUSTEES JOINTLY (*a*).

THIS INDENTURE, made the —— day of ——, 18— Parties. BETWEEN [*surviving trustees*], of &c., of the first part; [*new trustees*], of &c., of the second part; and [A. B.], of &c., of the third part; Recital of will; WHEREAS, (*recite will of testator, giving his real and personal estate to trustees upon certain trusts, with power to surviving or continuing trustees, in case of the decease &c. of any, to appoint one or more new trustee or trustees; also death of testator, and probate of his will.* AND WHEREAS, the said [*deceased trustee*] departed this life on the —— day of —— last, in consequence whereof the said [*surviving trustees*], —death of one of the trustees, and proposal to appoint new trustee. in execution of the hereinbefore-recited power reserved to them in this behalf, have proposed to nominate and appoint the said [*new trustees*] to be trustees of the said will of the said [*testator*], deceased, in the room and stead of the said [*deceased trustee*], deceased, and the said [*new trustees*] have consented and agreed to become such trustees accordingly. *Testatum:* NOW THIS INDENTURE WITNESSETH, that, in Surviving trustees, by virtue of power in the will, appoint new trustees. consideration of the premises, the said [*surviving trustees*], by virtue and in execution of the power and authority given and reserved to them by the hereinbefore-recited will, and of all other powers and authorities enabling them in this behalf, *Do* by these presents nominate and appoint the said [*new*

(*a*) See an observation as to the mode of effecting this, *ante*, p. 377.

4. BY SURVIVING TRUSTEES, WITH CONVEYANCE OF REAL AND PERSONAL ESTATE.

trustees] to be trustees in the room and place of the said [*deceased trustee*], for all the trusts and purposes, and with all the powers and authorities, expressed and contained in the hereinbefore-recited will of the said [*testator*], deceased, so far as the same trusts, purposes, powers, and authorities, are now subsisting, undetermined, or capable of taking effect; And the said [*new trustees*] do hereby severally testify and declare their acceptance of the said trust. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the nomination and appointment hereinbefore contained, and in consideration of the premises, and also in consideration of the sum of (*nominal consideration*), they the said [*surviving trustees*] *Do*, by these presents, bargain, sell, and release unto the said [*new trustees*], and their heirs (in the actual possession &c.), ALL THAT (*describe parcels*), and all other the freehold hereditaments now vested in the said [*surviving trustees*], as such surviving trustees of the hereinbefore-recited will of the said [*testator*] as aforesaid, together with all the rights, members, and appurtenances to the same hereditaments and premises belonging: And all the estate, &c.: TO HAVE AND TO HOLD the said —— and premises hereinbefore mentioned, and hereby released, or intended so to be, unto the said [*new trustees*], and their heirs, for ever, TO THE USE of the said [*surviving trustees*] and [*new trustees*], their heirs and assigns, for ever, Upon the trusts and for the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations in and by the hereinbefore-recited will of the said [*testator*], deceased, expressed and declared concerning his freehold hereditaments thereby devised, or such and so many of the same trusts, intents, and purposes, powers, provisoes, and declarations, as are now subsisting, undetermined, and capable of taking effect; and to, upon, or for no other use, trust, intent, or purpose whatsoever. AND THIS INDENTURE LASTLY WITNESSETH, that, in further pursuance of the nomination and appointment hereinbefore contained, and in consideration of the premises, and also in consideration of the sum of 10*s.* [*nominal consideration*], They the said [*surviving trustees*] *Do*, by these presents, bargain, sell, assign, and transfer unto the said [A. B.], his executors, administrators, and assigns, ALL THAT (*describe leasehold premises, shortly referring to the leases by which they are held*), and all other the leasehold tenements, and all and singular other the goods, chattels,

New trustees accept.

Further *testatum*:

Surviving trustees release freeholds to new trustees;

Habendum,

—to the use of old and new trustees upon the trusts of will.

Further *testatum*;

Old trustees assign to [A. B.] leaseholds and other personal estate;

4. BY SURVIVING TRUSTEES, WITH CONVEYANCE OF REAL AND PERSONAL ESTATE.

and personal estate, if any, now vested in the said [*surviving trustees*], as such surviving trustees of the hereinbefore-recited will of the said [*testator*], deceased, as aforesaid; Together with all the rights, members, and appurtenances, to the said premises respectively belonging; And all the estate &c. TO HAVE AND TO HOLD the —— hereinbefore described, and all and singular other the leasehold premises hereby assigned, or intended so to be, unto the said [A. B.], his executors, administrators, and assigns, for and during all the respective residues now to come and unexpired of and in the several terms, estates, and interests for which the said leasehold premises respectively are now held by the said [*surviving trustees*] as aforesaid, and for all other their estates, terms, and interests respectively, if any, therein; AND TO HAVE, RECEIVE, AND TAKE all other the premises hereby assigned, or intended so to be, unto the said [A. B.], his executors, administrators, and assigns, as and for his and their own proper goods, chattels, and effects absolutely; And it is hereby declared and agreed, that the said [A. B.], his executors or administrators, shall stand and be possessed of all and singular the premises respectively to him and them hereby assigned, or intended so to be, UPON TRUST, and to the intent, that the said [A. B.], his executors or administrators, forthwith, by an indenture or deed-poll already prepared, and intended to bear date the day next after the day of the date of, and to be indorsed on these presents, do and shall at the costs and expense of the said trust estate, effectually assign and assure the same premises, and all his or their estate and interest therein, by virtue of the assignment hereinbefore contained, unto the said [*surviving trustees*] and [*new trustees*], their executors, administrators, and assigns, Upon the trusts and for the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations in and by the hereinbefore-recited will of the said [*testator*], deceased, expressed and declared concerning the same premises respectively, or such and so many of the same trusts, intents, and purposes, powers, provisoes, and declarations, as are now subsisting, undetermined, or capable of taking effect, and upon or for no other trust, intent, or purpose whatsoever. IN WITNESS &c.

Habendum.

—to the intent that he may assign the same to the old and new trustees, upon the trusts of the will.

5. ASSIGNMENT *by* DEED-POLL *indorsed on the preceding Indenture* (*a*).

5. ASSIGNMENT INDORSED ON LAST PRECEDENT.

KNOW ALL MEN BY THESE PRESENTS, that the within-named [A. B.], in exercise and execution of the trust reposed in him by the within-written indenture, and in consideration of 10*s.* of lawful British money paid by the within-named [*surviving and new trustees*] to the said [A. B.], at or immediately before the execution of these presents, (the receipt whereof is hereby acknowledged), *Doth* by these presents bargain, sell, assign, and transfer unto the said [*surviving and new trustees*], their executors, administrators, and assigns, All and singular the leasehold tenements and premises, and other the personal estate, goods, chattels, and effects assigned to him the said [A. B.] in and by the within-written indenture; And all the estate, right, title, term and terms for years, property, possession, benefit, claim, and demand, both at law and in equity, or otherwise howsoever, of the said [A. B.] in and to the said premises; TO HAVE AND TO HOLD the leasehold premises hereby assigned, or intended so to be, unto the said [*surviving and new trustees*], their executors, administrators, and assigns, during all the respective residues now to come and unexpired of and in the several terms, estates, and interests, the respective residues whereof were assigned to or vested in the said [A. B.] by the within-written indenture. AND TO HAVE, RECEIVE, AND TAKE all other the premises hereby assigned, or intended so to be, unto the said [*surviving and new trustees*], their executors, administrators, and assigns, as and for their own proper goods, chattels, and effects, and as to all and singular the

(*a*) Where the only personalty vested in the continuing trustee consists of stock in the public funds, the necessity for an assignment of the personal estate, and consequently for a second deed for effecting this object, does not exist; a covenant by the continuing trustee to transfer the stock into the joint names of himself and the new trustee in the transfer books at the Bank of England, is better adapted to the nature of the property and the regulations under which alone its transfer can be effected.

As to the transfer of trust property in the funds.

5. ASSIGNMENT INDORSED ON LAST PRECEDENT.

premises hereby assigned, or intended so to be, in as full, ample, and beneficial a manner as the said [A. B.] is, in and by the within-written indenture, authorized and enabled to assign the same, UPON THE TRUSTS, nevertheless, and for the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations, in and by the within-recited last will and testament of the within-named [*testator*] deceased, expressed and declared concerning the same premises respectively, or upon, for, with, under, and subject to such and so many of the same trusts, intents and purposes, powers, provisoes, and declarations, as are now subsisting, undetermined, or capable of taking effect; And upon, to, or for no other trust, end, intent, or purpose whatsoever. (*Covenant by* [A. B.] *with the transferrees, that he has not incumbered*). IN WITNESS &c.

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6. RELEASE BY RETIRING TRUSTEE TO CONTINUING TRUSTEE.

6. [DEED *executed by a* TRUSTEE *under a* WILL, *declaring that he* DECLINES TO ACT *any longer as Trustee; and* RELEASE *by him to the* OTHER TRUSTEES *of the Estates devised in Trust; with the* CONCURRENCE *of the* GUARDIAN *of the Infant Tenant for Life, who is authorized to* DIMINISH *the* NUMBER OF TRUSTEES(*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*retiring trustee*], of &c., of the first part; [*guardian of infant tenant for life*], of the second part; and [*continuing trustee*], of &c., of the third part: WHEREAS (*recite devise of freeholds to retiring and continuing trustees, upon trusts, and clause authorizing the guardians of infant tenant for life to appoint new trustees in the room of any trustee declining to act, to dismiss any trustee, and to diminish or increase the number of trustees: appointment of* [A. B.] *and* [C. D.] *to be guardians of infant tenant for life on the death of testator*): AND WHEREAS, under or by virtue of a deed-poll, under the hand and seal of the said [C. D.], bearing date the ——

Recital of devise in trust;

Appointment of guardians.

Disclaimer of guardianship.

(*a*) [The guardian is here supposed to be acting in exercise of a power framed in accordance with the suggestion *ante*, p. 510.]

day of —— the said [C. D.] renounced and disclaimed the guardianship of the said [*infant tenant for life*], and the said [A. B.] is the only acting guardian of the said [*infant tenant for life*]: AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from, and hath determined to decline acting in, the trusts of the said will: AND WHEREAS the said [A. B.], as such guardian as aforesaid, has assented to the retirement of the said [*retiring trustee*] from the office of trustee under the above-recited will, and does not think fit to appoint a new trustee in the room of the said [*retiring trustee*], as he doth hereby declare. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, [the said [*retiring trustee*], doth hereby testify and declare, that he, the said [*retiring trustee*] hath declined, and by these presents doth decline, to continue to act as, or to be, a trustee, under the above in part recited will. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the premises], and in order that the lands and hereditaments so given, devised, appointed, or bequeathed, as aforesaid, by the above in part recited will of the said [*testator*], deceased, to the said [*retiring and continuing trustees*], their heirs, executors, administrators, and assigns, upon the trusts therein mentioned and hereinbefore referred to, may be wholly vested in the said [*continuing trustees*] as the continuing trustees under the said will: and for and in consideration of 10*s.* of lawful British money by the said [*continuing trustee*] to the said [*retiring trustee*] already paid, he, the said [*retiring trustee*], upon the acceptance of the said [*continuing trustees*], (testified by their being parties to and executing this indenture), *Hath* bargained, sold, released, and quit-claimed, and by these presents, *Doth* bargain, sell, release, and quit-claim (*b*), unto the said [*continuing trustees*], their heirs, executors, administrators, and assigns, *All* the lands and hereditaments so by the above in part recited will given, devised, appointed, or bequeathed, unto and to the use of the said [*retiring and continuing trustees*], their heirs, executors, administrators, and assigns as aforesaid, with their actual and reputed appurtenances, and all the estate, &c.; TO HAVE AND TO HOLD the lands, hereditaments, and premises, hereinbefore released, or expressed or intended so to be, unto and to the use of the

6. RELEASE BY RETIRING TRUSTEE TO CONTINUING TRUSTEE.

Trustee's wish to retire.

Testatum:

Trustee declines to act further.

Further *testatum:*

Retiring trustee releases to continuing trustee,

Parcels.

Habendum,

(*b*) This, being a release by one joint-tenant to others, does not require to be preceded by a lease for a year.

6. RELEASE BY RETIRING TRUSTEE TO CONTINUING TRUSTEE.

Upon trusts of will.

said [*continuing trustees*], their heirs, executors, administrators, and assigns respectively, according to the natures and qualities thereof, respectively, upon and for the trusts, intents, and purposes contained in and declared by the above in part recited will of the said [*testator*]. (*Covenant by the retiring trustee that he has not incumbered*). IN WITNESS &c.

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7. BY EXECUTORS OF TRUSTEE OF BOND-DEBT.

7. [APPOINTMENT *of* NEW TRUSTEES, (*with Consent of Husband and Wife*), *by the* EXECUTORS *of a* DECEASED TRUSTEE, (*who had* LENT *the Trust Funds to the* HUSBAND *under a Power contained in a Settlement, upon his* BOND), *and* ASSIGNMENT *to them of the* BOND DEBT. *By Indorsement upon the Settlement.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*executors of deceased trustee*], of &c., of the first part; the within-named [*husband*], of &c., and [*wife*], his wife, of the second part; and [*new trustee*], of &c., of the third part:

Recital of loan of trust funds to husband;

WHEREAS the within-named [*deceased trustee*], in pursuance of the power for that purpose contained in the within-written indenture, and with the consent of the said [*husband*] and [*wife*], his wife, sometime since sold out the within-mentioned sum of £——, Three Pounds per centum Consolidated Bank Annuities, and lent and advanced the produce thereof (amounting to the sum of £—— of British money) to the said [*husband*]; and for the purpose of securing the repayment of the said sum of £——, with interest, the said [*husband*], and [*surety*], of &c., as his surety, by a bond or obligation in writing, under their respective hands and seals bearing date the —— day of ——, became jointly and severally bound to the said [*deceased trustee*], his executors, and administrators, in the penal sum of £——; and the said bond is conditioned to be void on payment by the said [*husband*] and [*surety*], or either of them, or either of their heirs, executors, or administrators, unto the said [*deceased trustee*], his executors, administrators, or assigns, of the sum of £——, and interest for the same, after the rate and at the time therein mentioned:

Of will in the Scotch form;

AND WHEREAS the said [*deceased trustee*] duly made his last will and testament, or a trust

7. BY EXECUTORS OF TRUSTEE OF BOND-DEBT.

disposition in the nature of a last will, bearing date the —— day of ——, and thereof appointed the said [*executors*] and the survivors and survivor of them, who should accept of the trust therein mentioned, executors and intromittors of his said will or trust disposition: and he declared that any four of his said trustees accepting of the said trusts should be constituted a quorum, and that all acts and deeds done by such quorum should be equally as effectual as if done by the whole: AND WHEREAS the said [*deceased trustee*], departed this life at ——, in or about the month of ——, in the year ——, without having altered or revoked his said will or trust disposition; and the same was duly proved or registered (*a*) by the said trustees and executors thereof in ——: AND WHEREAS the said sum of £—— still remains due and owing under or by virtue of the said bond, with some interest in respect thereof: AND WHEREAS the said [*executors*] have respectively declined to act in, and are desirous of being discharged from, the trusts of the within-written indenture, and they have accordingly, with the consent of the said [*husband*] and [*wife*], his wife, determined to nominate and appoint the said [*new trustee*] to be trustee instead or in place of the said [*deceased trustee*], deceased, for all the purposes and with all the powers and authorities in the same indenture mentioned; and for that purpose to assign the above-recited bond, and the principal money and interest thereby secured, unto the said [*new trustees*], their executors, administrators, and assigns, upon the trusts hereinafter declared. NOW THIS INDENTURE WITNESSETH, that, for effecting the several purposes hereinbefore mentioned, and in pursuance and exercise of the power and authority given to or vested in the said [*executors*], by, under, or by virtue,

—death of trustee;

Probate or registry of will;

Executors of trustee have declined to act.

Testatum.

Executors of deceased trustee appoint new trustee.

(*a*) [An executor is complete executor, and may perform all the functions of his office immediately upon the decease of his testator, and before probate, except that he will not be recognised as such in a court of law or equity until he has obtained probate; for the only evidence of his executorship which a court of law or equity admits, is the probate granted by the Ecclesiastical Court. (*Hudson* v. *Hudson*, 1 Atk. 461; *Humphreys* v. *Humphreys*, 3 P. Wms. 351; *Doe* d. *Edwards* v. *Gunning*, 2 Nev. & P. 260. As to the evidence of executorship when the probate has been lost, see *Doe* d. *Bassett* v. *Maw*, 1 Jurist, 514. As to the effect of administration *cum testamento annexo* granted to a third person in the lifetime of the executor named in the will, see *Sewercrop* v. *Day*, 3 Nev. & P. 670.]

Authority of executor before probate.

7. BY EXECUTORS OF TRUSTEE OF BOND-DEBT.

of the within-written indenture, and of every other power and authority in anywise enabling them, or any of them, in this behalf, they, the said [*executors of deceased trustee*], with the consent and approbation of the said [*husband*] and [*wife*], his wife, testified by their severally executing these presents, [have and each of them hath nominated, substituted, and appointed, and] by this deed or instrument in writing, under their respective hands and seals, and attested by the two credible persons whose names are hereunder written as witnesses to their respectively executing these presents, *Do*, and each of them *Doth*, hereby nominate, substitute, and appoint the said [*new trustee*] to be a trustee in the stead or room of the said [*deceased trustee*], deceased, and of the said [*executors of deceased trustee*], as such executors of the said will of the said [*deceased trustee*], as aforesaid, as to all the trust moneys, securities, and premises, hereinbefore mentioned, and for all the purposes, and with all the powers and authorities, mentioned in, and for which the said [*deceased trustee*], deceased, was appointed a trustee in and by the within-written indenture, or such of them as still remain to be performed. AND THIS INDENTURE FURTHER WITNESSETH, that, in further pursuance and execution of the power or authority, or powers or authorities aforesaid, and in consideration of 10*s.* of lawful British money to each of them the said [*executors of deceased trustee*], as such executors as aforesaid, already paid by the said [*new trustee*], they, the said [*executors of deceased trustee*], with such consent and approbation of the said [*husband*] and [*wife*], his wife, and so testified as aforesaid, [*have*, and each of them *hath* bargained, sold, and assigned, and by these presents], *Do* and each of them *Doth*, bargain, sell, and assign, unto the said [*new trustees*], their executors, administrators, and assigns, the bond or obligation so as aforesaid given or entered into by the said [*husband*] and [*surety*] to the said [*deceased trustee*], and the principal sum of £——, thereby secured, and all interest due and to become due in respect thereof; and all other the sum and sums which shall be recovered or recoverable under or by virtue of the same bond; and all the right, title, interest, property, claim, and demand whatsoever of them the said [*executors of deceased trustee*], respectively, in, to, and upon the same and every part thereof respectively; TO HAVE, HOLD, RECEIVE, AND TAKE the said bond, principal money, and interest, and all other the

Further *testatum*:

Executors, with consent of husband and wife, assign bond and debt.

Habendum: Upon trusts of settlement.

premises hereby assigned, or intended so to be, and every part thereof respectively, unto the said [*new trustees*], their executors, administrators, and assigns, from henceforth, absolutely, and with full power and authority to and for them the said [*new trustees*], and the survivor of them, his or their executors, administrators, and assigns, as the true, lawful, and irrevocable attorneys and attorney of the said [*executors of deceased trustee*], and each of them, to ask, demand, sue for, recover, receive, and give effectual acquittances and discharges for the said principal money and interest, and every part thereof, and for all and every or any of the purposes aforesaid, from time to time revocably or irrevocably to appoint a substitute or substitutes: And it is hereby agreed and declared, that the said [*new trustees*], and the survivor of them, his executors or administrators, and their or his assigns, shall stand and be possessed of the said bond and the principal sum of £—— and interest thereby secured, and all other the premises hereby assigned or intended so to be, and the interest and income thereof, upon the trusts, and for the ends, intents, and purposes, and under and subject to the powers, provisoes, and declarations, to which the same are respectively now subject, under or by virtue of the within-written indenture. And each of them, the said [*executors of deceased trustee*], so far only as respects his own acts and deeds, doth hereby, separately, and for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*new trustees*], their executors, administrators and assigns, that he (*has not incumbered*). IN WITNESS &c.]

7. BY EXECUTORS OF TRUSTEE OF BOND-DEBT.

Letter of attorney.

Declaration of trusts.

Covenant against incumbrances.

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8. [APPOINTMENT (*by Indorsement*) *of a* NEW TRUSTEE *of a* TERM, *under a* SETTLEMENT, *and Assignment by the retiring Trustee and his Co-Trustee, to a* THIRD PERSON *in Trust to* RE-ASSIGN *to the continuing and new Trustees upon the Trusts of the Settlement.*

8. OF SETTLEMENT TERM.

TO ALL PERSONS whom these presents shall come unto or concern, the within-named [*tenant for life*] and [*wife*], his wife, and *retiring and continuing trustees*, SEND GREETING:—

Exordium.

8. OF SETTLEMENT TERM.

Recital of desire to be discharged from the trusts.

Testatum:

WHEREAS the said [*retiring trustee*] is desirous, and by these presents doth declare that he is desirous, to be discharged of and from, and declines to act in, the trusts of the within-written indenture. NOW KNOW YE, and these presents witness, that, in consequence of the said [*retiring trustee*] so hereby desiring to be discharged of and from, and declining to act in the trusts so reposed in him in and by the within-written indenture, they, the said [*husband*] and [*wife*], his wife, pursuant to, and in exercise and in execution of, the power and authority given and reserved to them in and by the within-written indenture, and by force and virtue thereof, and of all and every other power and authority, powers and authorities, to them in this behalf given or reserved, or them in anywise hereunto enabling, by this present writing, under the hand and seal of each of them, and attested by the two credible witnesses whose names are hereunder written, *Do*, and each of them *Doth*, nominate and appoint [*new trustee*] of &c., to be a trustee in the place and stead of the said [*retiring trustee*], in and for all and every the same trusts, intents, and purposes in or for which the said [*retiring trustee*] was named, made, or created a trustee in and by the within-written indenture. AND FURTHER KNOW YE, and these presents also witness, that to the end and intent that the now residue of the term of 2,000 years of and in the —— and hereditaments in and by the within-written indenture limited in use to the said [*retiring trustee*] and the within-named [*continuing trustee*], (the other trustee of the said term of 2,000 years), their executors, administrators, and assigns, may be, with all convenient speed, assigned and transferred in such sort and manner and form, and so that the same shall and may be legally and effectually vested in the said [*continuing trustee*], the continuing trustee of the said trust-term, and the said [*new trustee*], the new trustee so hereby appointed of the same term, upon the trusts mentioned and declared in and by the within-written indenture, or such of them as are now subsisting and capable of taking effect, and that the said [*new trustee*] may act and assist in the management, carrying on, and execution of the trusts to which he is so hereby appointed, in conjunction with the said [*continuing trustee*], the said continuing trustee of the same trust term, as fully and effectually in all respects and to all intents and purposes as if the said [*new trustee*] had been ori-

Appointment of new trustee.

Further *testatum.*

ginally, in and by the within-written indenture, nominated a trustee for the purposes aforesaid, and in consideration of the sum of 5*s.* of lawful British money to the said [*retiring and continuing trustees*], by [*assignee*], of &c., already paid, they the said [*retiring and continuing trustees*], at the request and by the direction of the said [*husband*] and [*wife*], (testified by their severally executing these presents), by these presents, *Do*, and each of them *Doth*, bargain, sell, assign, transfer, and set over unto the said [*assignee*], his executors, administrators, and assigns, ALL that &c., and all and singular other the hereditaments and premises comprised in the within-written indenture, and thereby released or otherwise assured and limited to the use of the said [*retiring and continuing trustees*], their executors, administrators, and assigns, for the term of two thousand years; And all the estate, right, title, interest, term of years yet to come and unexpired, trust, property, claim, and demand whatsoever, both at law and in equity, of them the said [*retiring and continuing trustees*], or either of them, in, to, or out of the said hereditaments and premises, and every of them, or any part thereof: TO HAVE AND TO HOLD the said —— and hereditaments, and all and singular other the hereditaments and premises hereby assigned, or intended so to be, unto the said [*assignee*], his executors, administrators, and assigns, for and during all the rest, residue, and remainder of the said term of two thousand years therein now to come and unexpired: and for all other the estate, term, and interest (if any) of the said [*retiring trustee*] therein, UPON TRUST, nevertheless, and to the intent and purpose that he the said [*assignee*], his executors, or administrators, shall and do, by a deed-poll, already engrossed, and intended to be indorsed on the fifth skin of the within-written indenture, and to bear date the day next after the day of the date of these presents, bargain, sell, assign, transfer, and set over all and singular the hereditaments and premises hereby assigned to him the said [*assignee*], or intended so to be, unto the said [*continuing and new trustees*], their executors, administrators, and assigns; TO HOLD the said premises unto the said [*continuing and new trustees*], their executors, administrators, and assigns, for all the residue of the said term of two thousand years which shall be then to come and unexpired, and for all other the estate and interest (if any) hereby assigned therein; *Upon the trusts*, and for the

8. OF SETTLEMENT TERM.

Assignment to third person of

Parcels.

Habendum,

for residue of term.

Upon trust to assign to continuing and new trustees.

8. OF SETTLEMENT TERM.

intents and purposes, and under and subject to the powers, provisoes, declarations, and agreements in and by the within-written indenture declared, expressed, and contained of and concerning the same term, or such of them as shall be then subsisting or capable of taking effect; AND each of them the said [*retiring and continuing trustees*] *Doth* hereby, for himself, his heirs, executors, and administrators, and so far only as concerns his own acts and deeds, covenant and agree with the said [*assignee*], his executors, administrators, and assigns, that he (the said covenanting party) has not at any time heretofore made, done, executed, committed, or willingly or knowingly suffered any act, deed, matter, or thing, whatsoever, whereby or by reason or means whereof the hereditaments and premises hereby assigned or intended so to be, or any of them, or any part thereof, or the said term of two thousand years therein, are, is, can, shall, or may be assigned, surrendered, impeached, charged, or incumbered. IN WITNESS &c.]

Covenant by trustees that they have not incumbered.

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9. ASSIGNMENT OF TRUST TERM.

9. [RE-ASSIGNMENT *in pursuance of the foregoing Deed.*

Exordium.

TO ALL PERSONS WHOM THESE PRESENTS SHALL COME UNTO OR CONCERN: the within-named [*husband*] and [*wife*] his wife, and [*assignee*], of &c., named in the instrument or deed or deed-poll indorsed upon the preceding or fourth skin of the within-written indenture, and bearing date the day next before the day of the date of these presents, SEND GREETING.

Testatum:

KNOW YE, AND THESE PRESENTS WITNESS, that, in pursuance and in execution of the trust reposed in the said [*assignee*] in and by the said instrument or deed-poll, and in consideration of the sum of 5*s.* of lawful British money to the said [*assignee*] already paid by the within-named [*continuing trustee*] and [*new trustee*], of &c., and in the

Assignment,

said instrument or deed-poll named, he the said [*assignee*], by these presents, *Doth*, at the request and by the direction and appointment of the said [*husband*] and [*wife*], his wife, (testified by their being, respectively, parties to and executing these premises), bargain, sell, assign, transfer, and

9. ASSIGNMENT OF TRUST TERM.

set over unto the said [*continuing and new trustees*], their executors, administrators, and assigns, ALL that &c., and all other the hereditaments and premises comprised in the within-written indenture, and thereby released or otherwise assured, and which were limited (or expressed so to be) to the use of the said [*former and continuing trustees*], their executors, administrators, and assigns, for the within-mentioned term of two thousand years, and which were by them the said [*former and continuing trustees*], in and by the aforesaid indorsed instrument or deed-poll, assigned to him, the said [*assignee*], his executors, administrators, and assigns, for the then residue of the said term of two thousand years, and for all other the estate, term, and interest (if any) of the said [*assignee*] therein; And all the estate, right, title, interest, term of years yet to come and unexpired, trust property, claim, and demand whatsoever, both at law and in equity, of him the said [*assignee*] in, to, or out of the said hereditaments and premises, and every of them, or any part thereof, by virtue of the aforesaid indorsed instrument or deed-poll; TO HAVE AND TO HOLD all and singular the hereditaments and premises hereby assigned, or intended so to be, unto the said [*continuing and new trustees*], their executors, administrators, and assigns, henceforth for and during all the residue and remainder of the said term of two thousand years therein now to come and unexpired, and for all other the estate and interest (if any) of the said [*assignee*] therein; Upon the trusts, nevertheless, to and for the intents and purposes, and under and subject to the powers, provisoes, declarations, and agreements in and by the within-written indenture declared, expressed, and contained of and concerning the same term, or such of them as are now subsisting or capable of taking effect; And the said [*assignee*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said [*continuing and new trustees*], their executors, administrators, and assigns, That he the said [*assignee*] hath not (*incumbered*). IN WITNESS &c.]

—of parcels comprised in term;

—and all the estate.

Habendum to new and continuing trustees,

upon the trusts declared by the within-written indenture.

10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

10. [DEED *to* NOMINATE *a* NEW TRUSTEE, *and Conveyance of* FREEHOLDS *to a third Person, in order that he may* RE-CONVEY *them to the continuing and new Trustees, so that they may have the* SEISIN, *and be empowered to exercise a Power of Sale over Lands which, having been under Contract of Sale, were excepted from a former Conveyance to the new and continuing Trustees* (*a*).

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [*continuing trustee*], of &c., and [*new trustee*], of &c., of the first part; [*husband*], of &c., and [*wife*], his wife, of the second part; and [*releasee*], of &c., of the third part.

Recital, that, by lease and release,

WHEREAS, by indentures of lease and release, bearing date, respectively, on or about the —— and —— days of ——, in the year ——, the release being expressed to be made between [*mother*], widow, of the first part; the said [*husband*] and [*wife*], his wife, of the second part; [M. N.], of the third part; [O. P.], of the fourth part; [*deceased trustee*], (since deceased), and the said [*continuing trustee*], of the fifth part; and [*trustees of term*], of the sixth part;

—common recovery, and several deeds in the release recited:

and by virtue of a common recovery, suffered in pursuance of the agreement for that purpose, contained in the said indenture of release, and by virtue of the several deeds and assurances in the same indenture of release recited or referred to,

—messuages, &c., were conveyed to trustees;

several messuages and other hereditaments in the now reciting indenture of release particularly mentioned, with their appurtenances, were conveyed and assured, or intended to be conveyed and assured, to the said [*deceased trustee*] and [*continuing trustee*] and their heirs,

To the use of mother for life; remainder,

to the use of the said [*mother*] and her assigns during her life; and after her decease, and subject and charged as in the now reciting indenture of release is mentioned,

—to husband for life; remainder,

To the use of the said [*husband*] or his assigns for life, and, after the determination of that estate by forfeiture or otherwise in the lifetime of the said

Remark on the precedent.

(*a*) [Although circumstances precisely the same as those to which the above precedent is adapted may not occur again, yet the precedent (which was settled by several eminent conveyancers) will be useful as a guide in similar cases of miscarriage, particularly in the recitals.]

[*husband*], *To the use* of the said [*deceased trustee*] and [*continuing trustee*], and their heirs, during the life of the said [*husband*], *In trust* to support and preserve the contingent uses and estates thereinafter limited from being defeated or destroyed; And, after the decease of the survivor of them, the said [*mother*] and [*husband*], *To the use* and intent that the said [*wife*] (*married name*) and her assigns, in case she should survive the said [*mother*] and [*husband*], should, from and immediately after the decease of the survivor of them, the said [*mother*] and [*husband*], receive, during her life, *one* annual sum or yearly rent-charge of £——, to be yearly issuing out of the said messuages or other hereditaments, and to be payable in the manner in the now reciting indenture mentioned, with the usual powers and remedies of entry and distress upon and perception of the rents, issues and profits of the said messuages and hereditaments, to enable the said [*wife*] and her assigns to recover and compel payment of the said annuity or yearly charge of £—— when in arrear; and, subject to the payment of the annual sum or rent-charge of £——, and the powers and remedies for recovering and compelling payment thereof, *To the several uses*, upon and for the several trusts, intents, and purposes, and with, under, and subject to the several powers, provisoes, and agreements in the now reciting indenture of release limited, expressed, and declared of and concerning the said messuages and other hereditaments, and particularly a proviso, declaration, or agreement, that, in case either or any of them the said trustees, or any future trustee or trustees, should happen to die or be desirous of being discharged from the trusts thereby created at any time or times before the said trusts should be fully performed or otherwise determined, then it should be lawful to and for the said [*husband*] and [*wife*], his wife, or the survivor of them, to nominate and appoint any other person or persons to be a trustee or trustees for the purposes thereinbefore mentioned, in the place or stead of the said [*deceased trustee*], [*continuing trustee*], and [*trustees of term*], or such of them, or such future trustee or trustees as should happen to die, or be desirous of being discharged from the trusts aforesaid (*b*); And that, upon such nomina-

10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

—to trustees to preserve; remainder,

—to the intent that wife might receive a rent-charge for life;

—remainder to the uses, &c., in release limited;

—power to appoint trustees;

(*b*) [The terms of the above power, it will be perceived, do not authorize any appointment of a new trustee, except by the tenant for life, or by *two* other trustees; nor does it allow of any addition to the number of trustees.]

10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

—on such appointment, estates and trust-monies to be vested in the trustees for the time being;

tion and appointment, the trustee or trustees for the time being, or, if all the trustees should be then dead, the heirs, executors, or administrators of the surviving trustee, should convey, assign, surrender, and transfer the said trust estates, and all trust moneys which should be then in their names so placed out at interest as is therein mentioned, and the securities, stocks, or funds upon which the same should be then invested, in such effectual manner, and so, as that the same might be vested in the joint names of the surviving or continuing trustee or trustees, and of such person or persons as should be appointed to be a trustee or trustees as aforesaid; or, in case there should be no such surviving or continuing trustee, then in the joint names of such persons as should be appointed to be trustees as aforesaid, but upon the same trusts, and to and for the same uses, intents, and purposes, as are thereinbefore mentioned and declared of and concerning the same, or to, for, and upon such of those uses, intents, purposes, and trusts as should be then subsisting or capable of taking effect; which person or persons so to be appointed a trustee or trustees as aforesaid, should and might thenceforth act in the management and execution of the aforesaid trusts, intents, and purposes, or such of them as should be then subsisting or capable of taking effect, as fully and effectually in all respects, and with the like indemnifications, as he or they might have done in case he or they had been originally, in and by the now-reciting indenture of release, appointed a trustee or trustees for the purposes aforesaid. AND WHEREAS, by a deed-poll or instrument in writing, bearing date on or about the —— day of —— last past, and indorsed on the last skin of the above-recited indenture of release, after reciting that the said [*deceased trustee*] departed this life on or about the —— day of —— in the year ——, leaving the said [*continuing trustee*] his co-trustee him surviving, upon whose death the messuages and hereditaments in the above-recited indenture of release comprised, and thereby granted and released, became and were then legally vested in the said [*continuing trustee*] by survivorship, upon the trusts in the above-recited indenture of release mentioned, expressed, and declared of and concerning the same, it is witnessed, that, by virtue and in pursuance of the power enabling them the said [*husband*] and [*wife*], his wife, in that behalf, which in the above-recited indenture of release is contained, and by force and virtue of all other powers to them in anywise belonging or appertaining, and in exercise

—upon the same uses and trusts as are declared in release.

New trustees to have the same power as trustees originally appointed.

Of deed-poll, whereby a new trustee was appointed in the room of a deceased trustee;

thereof, they the said [*husband*] and [*wife*], his wife, did nominate and appoint the said [*new trustee*] to be a trustee in the room and stead of the said [*deceased trustee*], and to act in conjunction with the said continuing trustee, to, upon, and for the several trusts, intents, and purposes in and by the above-recited indenture of release limited, expressed, and declared of and concerning the several hereditaments and premises therein comprised, or such of them as were then subsisting or capable of taking effect. 10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

And it is by the now-reciting deed-poll further witnessed, that, in order to effectuate the purposes aforesaid, and for the consideration therein mentioned, he the said [*continuing trustee*], at the request and by the direction and appointment of the said [*husband*] and [*wife*], his wife, testified as is therein mentioned, did grant, bargain, sell, aliene, release, and confirm unto the said [*new trustee*] (in his actual possession then being, &c.) and to his heirs, the hereditaments and premises in the above-recited indenture of release particularly mentioned and described, and thereby granted and released, with their appurtenances, (except the messuage or tenement and premises called [G.], which had been sold or were under contract of sale), to hold the hereditaments and premises thereby granted and released, or intended so to be, unto the said [*new trustee*] and his heirs, to the use of them the said [*continuing trustee*] and [*new trustee*] and their heirs, but to, upon, and for such and the same uses, trusts, intents, and purposes, and under and subject to the same powers, provisoes, conditions, and agreements, as were in and by the above-recited indenture of release limited, expressed, and declared of and concerning the same hereditaments and premises, or such of them as were then subsisting or capable of taking effect. —and continuing trustee conveyed trust estates (except an estate that had been sold) to use of both trustees.

And whereas the said [*husband*] hath contracted and agreed with [*purchaser*], of &c., esquire, for the sale to him of the messuages and other hereditaments hereinafter mentioned to be hereby conveyed, (being part of the hereditaments in the above-recited deed-poll of the —— day of —— last past, called [G.]). That husband had contracted to sell part of estate called [G.]

And whereas the messuages and other hereditaments so contracted to be sold by the said [*husband*] to the said [*purchaser*] as aforesaid, cannot be effectually conveyed and assured unto him the said [*purchaser*] and his heirs, but by an exercise of a power of sale by the above-recited indenture of the —— day of ——, given or limited to the said [*deceased trustee*] and [*continuing trustee*], and That estate so sold cannot be conveyed but under a power limited to the original trustees and the survivor of them, and his heirs.

10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

That new trustee being appointed in the room of deceased trustee, it is apprehended that such appointment created him a joint-trustee of [G.], as well as of the other estates.

the survivor of them, and the heirs of such survivor. AND WHEREAS the said [*husband*] and [*wife*], his wife, having, by the above-recited deed-poll or instrument in writing of the —— day of —— last past, nominated and appointed the said [*new trustee*] to be a trustee in the stead of the said [*deceased trustee*], and to act in conjunction with the said continuing trustee, upon and for the trusts, intents, and purposes limited, expressed, and declared of and concerning the hereditaments in the said indenture of release of the —— day of —— mentioned, such nomination and appointment operated as a nomination and appointment of the said [*new trustee*] to be a trustee in conjunction with the said [*continuing trustee*], in respect of all the hereditaments comprised in the said indenture of release of the —— day of ——, notwithstanding the said [G.] estate is in the above-recited deed-poll expressly excepted out of the hereditaments in the said indenture mentioned to be thereby released. AND WHEREAS in the clause contained in the above-recited indenture of the —— day of ——, for the nomination and appointment of new trustees, it is expressly mentioned and declared, that, upon such nomination and appointment, the trustee or trustees for the time being, or if all the trustees should be then dead, the heirs, executors, or administrators of the surviving trustee, should convey, assign, surrender, and transfer the trust estates therein mentioned, in such effectual manner and so as that the same might become vested in the joint names of the surviving or continuing trustee or trustees, and of such person or persons as should be appointed to be a trustee or trustees, but, nevertheless, upon the same trusts, and to and for the same uses, intents, and purposes, as were thereinbefore mentioned and declared of and concerning the same trust estates; and that the person or persons so to be appointed a trustee or trustees should and might thenceforth act in the management and execution of the trusts, as fully and effectually as he and they might have done in case he or they had been originally in and by the indenture now in recital appointed a trustee or trustees for the purpose therein mentioned; and it is therefore apprehended, that, previously to the said [*new trustee*] being qualified to act for the purposes for which he has been so appointed to act in conjunction with the said [*continuing trustee*] as hereinbefore is mentioned, the seisin, possibility of seisin, uses, and estates, which, by the decease of the said [*de-*

That the power to appoint new trustees required the surviving trustee, &c., to convey trust estates, so that the same might become vested in trustees for the time being, upon the same trusts, &c.;

—and it is therefore apprehended, that before new trustee can act, the seisin, possibility of seisin, &c., vested in continuing trustee,

ceased trustee], vested in the said [*continuing trustee*], alone by survivorship, should be conveyed to and become vested in the said [*continuing trustee*] and [*new trustee*], jointly (*c*). NOW THEREFORE THIS INDENTURE WITNESSETH, that, by force and virtue, and in exercise and execution, of the power and authority for this purpose by the above-recited indenture of release, of the —— day of ——, limited or reserved to, or vested in, the said [*husband*] and [*wife*], his wife, as aforesaid, and of all other powers and authorities whatsoever enabling them in that behalf, they the said [*husband*] and [*wife*], his wife, *Do*, by this deed or writing, nominate, substitute, appoint, and confirm the said [*new trustee*] to be a trustee in the room and place of the said [*deceased trustee*], deceased, for the purposes mentioned in the above-recited indenture of release, so far as relates to or concerns the hereditaments hereinafter mentioned to be hereby released and conveyed. AND THIS INDENTURE ALSO WITNESSETH, that, by force and virtue, and in exercise and execution, of the power and authority for this purpose by the above-recited indenture of release of the —— day of —— given or limited to, or vested in, the said [*continuing trustee*] and [*new trustee*], or either of them, and of all other powers and authorities enabling them, or either of them, in this behalf; and for and in consideration of the sum of 10*s.* of lawful British money by the said [*releasee*] to each of them the said [*continuing trustee*] and [*new trustee*] paid at or immediately before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged; they the said [*continuing trustee*] and [*new trustee*], upon the request and with the privity and approbation of the said [*husband*] and [*wife*], his wife, (testified by their being parties to, and severally sealing and delivering, these presents), *Have*, and each of them *Hath*, granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents, *Do*, and each of them *Doth*, grant, bargain, sell, aliene, release, convey, and confirm unto the said [*releasee*], (in his actual possession, &c., now being, by virtue of a bargain and sale to him thereof already made, by indenture, by them the said [*continuing and new trustee*], for 5*s.* consideration, and by force of the statute made for transferring uses into possession), and his heirs, ALL THAT &c.,

10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

should be conveyed to them jointly.

First *testatum*:

—appointment and confirmation by husband and wife of new trustee to be trustee of estate hereby conveyed.

Second *testatum*:

Release in fee by continuing and new trustee by direction of husband and wife to releasee.

Parcels, with exception.

(*c*) But, on this doctrine, see some remarks, Vol. 7, p. 536, 2nd ed.

10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

General words.

Habendum.

(Subject to mother's life estate).

To releasee,

—to the use of releasee;

—to the intent that he may grant same to old and new trustee;

—to the use, &c., limited by settlement.

(*the estate called* [G.]), except a certain &c.; together with all houses, &c.; and the reversion, &c.; and all the estate, &c., of them the said [*continuing trustee*] and [*new trustee*], and each of them, of, in, to, from, or out of the same messuage, and other hereditaments, and every part and parcel thereof: TO HAVE AND TO HOLD the said messuage, hereditaments, and all and singular other the premises hereby released or otherwise assured, or expressed and intended so to be, with their appurtenances, except as before excepted, (subject to the life estate of the said [*mother*] in the same premises), unto the said [*releasee*] and his heirs, to the only proper use and behoof of the said [*releasee*], his heirs and assigns, to the intent that he the said [*releasee*] may forthwith grant and convey the same unto the said [*continuing trustee*] and [*new trustee*] and their heirs, to the uses, upon and for the trusts, intents, and purposes, with, under, and subject to the powers, provisoes, agreements, and declarations, charged and chargeable with the sums of money and with the limitations and remainders over, to, for, upon, with, under, and subject to which the said messuage and the other hereditaments hereinbefore mentioned to be hereby released or otherwise assured would now, under and by virtue of the above-recited indenture of release of the —— day of ——, and of the deeds and assurances therein mentioned or referred to, and the common recovery suffered in pursuance of the said indenture of release, stand and be limited, settled, subject, or liable, in case this present indenture, and the bargain and sale for a year upon which the same is grounded, and the above-recited deed-poll of the —— day of —— last past, had not been made or executed, and the name of the said [*new trustee*] had, in the above-recited indentures of lease and release, been inserted instead of the name of the said [*deceased trustee*], and the said messuages, hereditaments, and premises, instead of being by the said indentures of lease and release, and the recovery suffered thereupon, conveyed and assured to the said [*deceased trustee*] and [*continuing trustee*] and their heirs, had been thereby conveyed and assured to the said [*continuing trustee*] and [*new trustee*] and their heirs; and the estates, trusts, powers, and authorities, which, by the above-recited indenture of release, were limited or given to the said [*deceased trustee*] and [*continuing trustee*] and their heirs, or to the said [*deceased trustee*] and [*continuing trustee*] and the survivor

of them, and the heirs and assigns of such survivor, had, by the same indenture of release, been limited or given to the said [*continuing trustee*] and [*new trustee*], and their heirs, or to the said [*continuing trustee*] and [*new trustee*], and the survivor of them, and the heirs and assigns of such survivor. IN WITNESS &c.]

10. OF FREEHOLDS OMITTED IN A PREVIOUS APPOINTMENT.

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11. [RECONVEYANCE *to the* CONTINUING *and* NEW TRUSTEES, *by Indorsement upon the preceding Deed.*

11. RECONVEYANCE TO CONTINUING AND NEW TRUSTEES.

THIS INDENTURE, made the —— day of ——, in the year ——, BETWEEN the within-named [*releasee*] of the one part, and the within-named [*continuing trustee*] and [*new trustee*] of the other part, WITNESSETH, that, in performance of the trusts reposed in the said [*releasee*] by the within-written indenture, and in consideration of 10*s.* of lawful British money to him by the said [*continuing trustee*] and [*new trustee*] paid at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged; he the said [*releasee*] hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, aliene, release, and confirm unto the said [*continuing trustee*] and [*new trustee*], (in their actual possession, &c.), and to their heirs, all and singular the messuage and other hereditaments which by the within-written indenture were granted, bargained, sold, aliened, released, conveyed, and confirmed unto and to the use of the said [*releasee*], and his heirs, to the intent therein mentioned, with their appurtenances, and the reversion, &c., and all the estate, &c.; TO HAVE AND TO HOLD ALL AND SINGULAR the messuage and other hereditaments thereby released or otherwise assured or expressed and intended so to be, with their appurtenances, (but subject to the life-estate of the said [*mother*] in the said premises), unto the said [*continuing trustee*] and [*new trustee*], and their heirs, To the uses, upon and for the trusts, intents, and purposes, with, under, and subject to the powers, provisoes, agreements, and declarations, charged and chargeable with the sums of money and with the limitations and remainders over, to, for, upon, with, under, and

Parties.

Testatum.

Release to old and new trustees.

Parcels.

Habendum to old and new trustees.

To the uses of the settlement.

11. RECONVEYANCE TO CONTINUING AND NEW TRUSTEES.

subject to which the messuage and other hereditaments hereinbefore by these presents granted, bargained, sold, aliened, released, and confirmed, or expressed and intended so to be, would now, under and by virtue of the within-mentioned indenture of release of the —— day of ——, and of the deeds and assurances therein mentioned or referred to, and the common recovery suffered in pursuance of the said indenture of release, stand and be limited, settled, subject, or liable, in case the within-written indenture, and the bargain and sale for a year upon which the same is grounded, and the within-mentioned deed-poll of the —— day of —— last past, and this present indenture and the bargain and sale for a year upon which the same is grounded, had not been made or executed, and the name of the said [*new trustee*] had in the within-mentioned indentures of lease and release of the —— and —— days of ——, been inserted instead of the name of the said [*deceased trustee*], and the said messuage, hereditaments, and premises, instead of being by the said indentures of lease and release of the —— and —— days of ——, and the recovery suffered thereupon, conveyed to the said [*deceased trustee*] and [*continuing trustee*], and their heirs, had been thereby conveyed and assured to the said [*continuing trustee*] and [*new trustee*], and their heirs; and the estates, trusts, powers, and authorities, which, by the same indenture of release of the —— day of ——, were limited or given to the said [*deceased trustee*] and [*continuing trustee*], and their heirs, or to the said [*deceased trustee*] and [*continuing trustee*], and the survivor of them, and the heirs and assigns of such survivor, had by the said indenture of release been limited or given to the said [*continuing trustee*] and [*new trustee*], and their heirs, or to the said [*continuing trustee*] and [*new trustee*], and the survivor of them, and the heirs and assigns of such survivor. IN WITNESS &c.]

12. [CONDITIONAL NOMINATION *of a* NEW TRUSTEE, *and Conveyance of* FREEHOLD ESTATES *to the Use of such New Trustee and the continuing Trustees jointly, under a Clause in a Will, directing the Appointment of a New Trustee immediately upon the Death &c. of any Trustee, it being* UNKNOWN *whether* ONE OF THE TRUSTEES *named in the Will is* LIVING OR DEAD. 12. WHERE A TRUSTEE IS SUPPOSED TO BE DEAD.

THIS INDENTURE, made the —— day of ——, BETWEEN [*donee of the power*], of &c., of the first part; [*continuing trustees*], of &c., of the second part; and [*new trustee*], of &c., of the third part: WHEREAS [*testator*], late of ——, deceased, in and by his last will and testament, bearing date on or about the —— day of ——, duly executed as was then required for devising real estate, gave and devised the manors, messuages or tenements, lands, and hereditaments hereinafter described and hereby released, or intended so to be, unto and to the use of [*missing trustee*] and the said [*continuing trustee*], and their heirs, upon the trusts, and to and for the intents and purposes in and by the now reciting will declared, expressed, and contained; And, in his now reciting will, the said [*testator*] declared and directed, that, in case any of the said [*missing and continuing trustees*], or any other trustee or trustees to be appointed in the room or stead of the said [*missing and continuing trustees*], or any of them, under or by virtue of the now reciting power or authority, should depart this life, or desire to retire from, or refuse, or become incapable to act in the trusts of his said will, then and in every such case, it should be lawful for the said [*tenant for life*], and, in case of his refusal or neglect so to do, within the space of one calendar month from the time of such trustee's dying, or refusing, or becoming incapable to act as aforesaid, then, and in either of such cases, for the survivors or either of the said [*missing and continuing trustees*], or other trustee or trustees to be appointed in the room or stead of them or any of them, as soon as conveniently might be, by writing under his or their hand or hands, to nominate or appoint any fit person to be a trustee in the room or stead

Parties.

Recital of will devising freeholds to trustees;

—of power to change trustees;

12. WHERE A TRUSTEE IS SUPPOSED TO BE DEAD.

of such trustee so dying, or refusing, or becoming incapable to act as aforesaid; And the said testator further directed, that, immediately upon every such nomination or appointment of a new trustee as aforesaid, the manors, messuages, or tenements, lands and hereditaments so devised to the use of the said [*missing and continuing trustees*] and their heirs, in trust, as aforesaid, should be conveyed to, or otherwise vested in, such new trustee jointly with such surviving or continuing trustee as aforesaid, and their heirs, upon the trusts, and to and for the intents and purposes in and by the now reciting will declared, expressed, or contained (*a*): AND WHEREAS the said testator departed this life on or about the —— day of ——, without having revoked or altered his said will, which was duly proved by the executors therein named in the —— court of ——, on the —— day of ——: AND WHEREAS the said [*missing and continuing trustees*] accepted and acted in the trusts by the above-recited will so reposed in them as aforesaid: AND WHEREAS the said [*missing trustee*], in or about the month of ——, in the year ——, left this country, and went to India, as he then stated, for a temporary purpose, and without having retired from, or declined to act in the trusts aforesaid: AND WHEREAS the said [*missing trustee*] has not since been heard of, and it is apprehended that he may be dead, and that thereby, in pursuance of the authority and directions so contained in the above-recited will of the said [*testator*] as aforesaid, it may have become necessary to appoint a person to be a trustee in the room or stead of the said [*missing trustee*]: AND WHEREAS, the said [*tenant for life*], in pursuance of the above-recited authority, desires, and hath proposed, to nominate or appoint the said [*new trustee*] to be a trustee in the room or stead of the said [*missing trustee*] in case the said [*missing trustee*] has already (as is apprehended) departed this life; and the said [*new trustee*] hath consented and agreed to become such trustee accordingly. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said desire, and in exercise and execution of the power and authority, and in

—of death of testator;

—of acceptance of trusts;

—that one trustee has gone abroad, and has not been heard of;

—intention to appoint a trustee in his place, if dead.

Testatum:

(*a*) [The terms of the above power, it will be perceived, do not authorize any appointment of a new trustee except by the tenant for life, or by two other trustees; nor does it allow of any addition to the number of trustees.]

obedience to the directions, in this behalf contained in the above-recited will of the said [*testator*] deceased, and in exercise and execution of all other powers and authorities enabling him hereunto, the said [*tenant for life*] *Doth, by* this present writing under his hand, nominate and appoint the said [*new trustee*] to be a trustee in the room or place of the said [*missing trustee*] jointly with the said [*continuing trustees*], upon all the trusts, and to and for all the intents and purposes in and by the above-recited will declared, expressed, and contained, or upon, to, and for such and so many of the same trusts, intents, and purposes, as are now subsisting, undetermined, and capable of taking effect; PROVIDED ALWAYS, and it is hereby declared, that this nomination and appointment is intended to take effect, and shall take effect, only in case the said [*missing trustee*] has departed this life before the date of these presents; And the said [*new trustee*] doth hereby testify and declare his acceptance of the above-contained nomination and appointment. AND THIS INDENTURE FURTHER WITNESSETH, that, in further exercise and execution of the power and authority, and in obedience to the directions, so as aforesaid contained in the hereinbefore-recited will of the said [*testator*], deceased, and in consideration of the premises, and also in consideration of 10*s.* of lawful British money to each of them the said [*continuing trustees*] already paid by the said [*new trustee*] (the receipt whereof is hereby acknowledged), they the said [*continuing trustees*], *Do*, by these presents, grant, bargain, sell, and release unto the said [*new trustee*] and his heirs (in the actual possession of the said [*new trustee*] now being by virtue of an indenture of bargain and sale for a year, bearing date the day next before the day of the date of these presents); ALL SUCH OF THOSE (*describe parcels*), and all such other freehold hereditaments, as are now vested in the said [*continuing trustees*] jointly by survivorship upon the decease of the said [*missing trustee*], as the only two surviving trustees of the hereinbefore-recited will of the said [*testator*], deceased (*b*), together with all the rights, mem-

12. WHERE A TRUSTEE IS SUPPOSED TO BE DEAD.

Tenant for life appoints new trustees.

Further *testatum*: Continuing trustees release,

Parcels described with reference to an unknown event.

(*b*) [By this mode of describing the parcels, the conveyance fails of effect altogether, unless the apprehended death of the missing trustee has actually happened, and thus a severance of the joint estate is prevented if the trustee is alive. A conveyance of the parcels, with-

Remarks on the above precedent.

12. WHERE A TRUSTEE IS SUPPOSED TO BE DEAD.

Habendum,

bers, and appurtenances to the same manors, hereditaments, and premises belonging; And all the estate, &c.; To HAVE AND TO HOLD the manors, messuages or tenements, lands or hereditaments, and premises hereinbefore mentioned, and hereby released, or intended so to be, unto the said [*new trustee*] and his heirs for ever, to the use of the said [*continuing trustees*] and [*new trustee*], their heirs and assigns, for ever; Upon the trusts, and to the intents and purposes, and with, under, and subject to the powers, provisoes, and declarations, declared, expressed, and contained in and by the hereinbefore-recited will of the said [*testator*], deceased, concerning the same manors, messuages or tenements, lands, hereditaments, and premises, or such and so many of the same trusts, intents, and purposes, powers, provisoes, and declarations as are now subsisting, undetermined, and capable of taking effect, and upon or for no other use, trust, intent, or purpose whatsoever. IN WITNESS &c.

—to the use of continuing and new trustees on the trusts of the will.

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out this qualification, to the use of the missing trustee (if alive), jointly with the continuing trustees, and, if the missing trustee be dead, then to the use of the continuing and new trustees, would be erroneous; for, (supposing the missing trustee not to be dead), the conveyance by his co-trustees would have severed the joint-tenancy, and the subsequent limitation of their shares to the joint use of the three would be inoperative to create a joint-tenancy in respect of the share left in the missing trustee;—in other words, the estate would be in the singular condition of being held in common in two portions of one-third and two-thirds, the undivided two-thirds belonging to the three in joint-tenancy. It is to be observed, that the above conveyance is only useful for the purpose of keeping alive the power of appointing new trustees, and of protecting the continuing trustees from any responsibility they might incur from their not exercising such power, in case it turned out that the trustee who had gone abroad was actually dead. In all other respects, the inconveniences resulting from the uncertainty as to the existence of such trustees, and the danger of dealing with the other trustees alone, remain undiminished. It may be added, that in case it should turn out that the absent trustee is alive, the acts of the fourth person, then apparently invested with the office, will be simply nugatory.]

13. DEED *of* APPOINTMENT *of* NEW TRUSTEES *under a Settlement of real Estate, in the room of Trustees, one of whom had become* LUNATIC, *and was* DESIROUS *to* RETIRE, *the Donee* EXERCISING POWERS *of* REVOCATION *and* NEW APPOINTMENT, *and by means thereof divesting the settled Lands out of the Old, and vesting them in the New Trustees* (*a*). (*Variation where the Trustees have only an Estate for preserving contingent Remainders*).

13. EXERCISING POWERS OF REVOCATION AND NEW APPOINTMENT.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*retiring trustee*], of &c., of the first part; [*donee of power*], of &c., of the second part; and [*new trustee*], of &c., of the third part; WHEREAS (*recite lease and release by way of settlement, by which certain freehold estates* (*b*) *were conveyed to the trustees in fee, upon certain trusts, with a power of changing the trustees in case of any of them dying, choosing to be discharged, or becoming incapable, or refusing to act*): AND WHEREAS the said [*lunatic trustee*] has unhappily become afflicted with mental derangement or imbecility, by

Parties.

Recital of deed creating trusts and power;

—That one of the trustees had become incapable of acting;

(*a*) Where a power of appointing new trustees is contained in a settlement of freehold lands which vests an estate in the trustees, it is sometimes convenient, in order to divest this estate out of the old and vest it in the new trustees, instead of making the old trustees convey to the new trustees, which is the common mode, to give to the donee of the power of nominating the new trustees, a power also to revoke the subsisting uses, and appoint the lands to other uses, or in other words, to revoke the limitation to the old trustees, and declare the use in favour of the new trustees; in which case, if (as in the instance supposed, in the text) one of the trustees becomes incompetent to convey his estate, the donee of the power is enabled to vest the lands in the new trustee or trustees without his concurrence. The power would also be useful where a trustee contumaciously refuses either to act or to execute any instrument, declaring his desire to be removed; though, when practicable, it is always better that the retiring trustee should be made a party to the deed, for the purpose of testifying his resignation of the trust.

As to the mode of vesting the estate in the new trustees.

(*b*) [Where part of the trust property consists of money lent on mortgage by the trustees, it is desirable to keep the trusts out of sight; as to the mode of doing which, and for a precedent of a transfer of such a mortgage on a change of trustees, *vide ante*, p. 373.]

13. EXERCISING POWERS OF REVOCATION AND NEW APPOINTMENT.

reason whereof he is incapable of executing the trusts and powers reposed in him by the hereinbefore-recited indenture of release or settlement; and although no commission of lunacy has been issued against him, the existence of his said malady appears by the certificate, a copy whereof is indorsed on these presents, the same having been taken, pursuant to the act of Parliament, previously to the said [*lunatic trustee*] being conveyed to a lunatic asylum (*b*): AND WHEREAS the said [*retiring trustee*], by reason of his advanced age, is also desirous of being discharged from his said trust, as he doth hereby testify and declare: AND WHEREAS the said [*donee*] hath requested the said [*new trustees*] to become trustees of the hereinbefore-recited indenture, in the room and place of the said [*lunatic trustee*] and [*retiring trustee*], which the said [*new trustees*] have consented and agreed to do. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, the said [*donee*], by virtue and in execution of the power or authority so as aforesaid given and reserved to him by the hereinbefore-recited indenture of release or settlement, and of every other power or authority enabling him on this behalf, *Doth* by these presents, sealed and delivered by him the said [*donee*], in the presence of and attested by the two persons whose names are hereupon indorsed as witnesses attesting the execution hereof by him, choose, nominate, and appoint the said [*new trustees*] respectively to be trustees in the room and place of the said [*lunatic trustee*] and [*retiring trustee*] for and in respect of and for the purpose of exercising and performing, all and singular the trusts, powers, and authorities expressed and contained in the hereinbefore-recited indenture of release or settlement, and which now remain to be executed and performed, as fully and effectually, to all intents and purposes, as if the said [*new trustees*] respectively had been appointed trustees by the above-recited indenture of release or settlement; And the said [*new trustees*] respectively do hereby testify and declare their consent to become trustees of the hereinbefore-recited indenture, in pursuance of the

—That the other desired to be discharged;

—That donee had requested new trustees to become trustees in their room.

Testatum:

Donee, by virtue of power, appoints new trustees.

Remark as to the mode of proving the lunacy of the trustee.

(*b*) As the title to the settled lands would be affected by the operation of the present deed, if the newly-appointed trustees should exercise a power of sale, and as its validity is dependent upon the truth of the allegation of the trustee's incapacity, it is desirable that evidence of that fact should be adduced to accompany the title; and the evidence here suggested seems to be the best that the nature of the case admits of, and would, probably, be sufficient to satisfy the scruples of a purchaser.

nomination and appointment hereinbefore contained (*c*). AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the premises, the said [*donee*], by virtue and in execution of the power or authority in this behalf given or reserved to him in and by the hereinbefore-recited indenture of release or settlement, and of every other power or authority enabling him thereunto, *Doth*, by these presents, sealed and delivered by him the said [*donee*], in manner aforesaid, absolutely revoke and make void the use and limitation limited, made, and declared unto the said [*lunatic trustee*] and [*retiring trustee*], their heirs and assigns, in and by the hereinbefore-recited indentures of lease and release, or settlement, or one of them, and all and singular the trusts, powers, and authorities vested in them in and by the same indentures or indenture, and doth declare the same to be absolutely null and void, anything contained in the said indentures, or either of them, to the contrary notwithstanding. AND THIS INDENTURE LASTLY WITNESSETH, that, in consideration of the premises, the said [*donee*], by virtue and in execution of the power and authority in this behalf given and reserved to him in and by the hereinbefore-recited indenture of release or settlement, and of every other power or authority enabling him thereunto, *Doth* by these presents, sealed and delivered by him the said [*donee*], in manner aforesaid, absolutely direct, limit, and appoint that all and singular the ——, hereditaments, and premises comprised in, and intended to be conveyed and assured by, the hereinbefore-recited indentures of lease and release, or settlement, with their and every of their appurtenances, shall, immediately after the execution of these presents, be, remain, and continue TO THE USE of the

13. EXERCISING POWERS OF REVOCATION AND NEW APPOINTMENT.

Further *testatum:*

Donee revokes the use limited to old trustees.

Further *testatum:*

Donee appoints the lands to the use of the new trustees.

(*c*) If the trustees had no estate, but were simply donees of a power of sale, the present deed would stop here; for, as the limitations of the settlement would remain unchanged, the revocation and new appointment would be inapplicable. If they had mere estates for preserving contingent remainders, the power of revocation and new appointment should be qualified in the manner suggested in the next note; but, unless the power requires the estate for preserving remainders to be transferred upon the nomination of new trustees, it might be as well to leave it in the old trustees, since the trust involves no active duties; and if the estate should hereafter be sold, the power of sale, if properly framed, would enable the donee to divest the estate of the trustees. (See some observations bearing upon this, *post*, Vol. 7, p. 535, 2nd ed.)

Suggested variation where the trustees have no estate.

13. EXERCISING POWERS OF REVOCATION AND NEW APPOINTMENT.

said [*new trustees*], their heirs and assigns (*d*), for ever, upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, declarations, and provisoes expressed concerning the same in and by the hereinbefore-recited indenture of release or settlement, or such and so many of the same trusts, intents and purposes, powers, declarations, and provisoes, as are now subsisting or capable of taking effect. (*Add covenant by retiring trustee with new trustees that he has not incumbered*). IN WITNESS &c.

(*d*) If, under the settlement containing this power, the trustees take only an estate to preserve contingent remainders, then, instead of the words "for ever," say—

Variation where the trustees take an estate to preserve contingent remainders only.

"for and during all the residue and remainder (*or the respective residues and remainders as the case may be*) now to come and unexpired of the estate and interest (*or* several estates and interests, *as the case may be*) which, in and by the hereinbefore-recited indenture of release or settlement, was (*or were*) limited to the said [*lunatic trustee*] and [*retiring trustee*], their heirs and assigns, and to the intent that the said [*new trustees*] respectively, and the survivor of them, his heirs or assigns, may be competent to exercise and carry into effect all and singular the powers and authorities contained in the said indenture of release or settlement, as fully and effectually, to all intents and purposes, as if their names had been inserted therein, instead of the names of the said [*lunatic trustee*] and [*retiring trustee*] respectively."

14. NOMINATION *of* NEW TRUSTEES *under a Will.* CONVEYANCE *by* RETIRING *to* NEW TRUSTEES *of* FREEHOLD, *and* ASSIGNMENT *of* PERSONAL ESTATE, *consisting of Leaseholds, Credits, &c.* COVENANT *by* RETIRING TRUSTEES *to transfer Stock in the* PUBLIC FUNDS.

14. FREEHOLDS AND PERSONAL ESTATES.

THIS INDENTURE, made the —— day of ——, BETWEEN [*retiring trustees*], of &c., of the first part; [*donees*], of &c., of the second part; and [*new trustees*], of &c., of the third part; (*recite will creating trusts, setting forth at large the power of new appointment, and that trustees had acted in the execution of the trusts*): AND WHEREAS the said [*retiring trustees*] are desirous of being discharged from the trusts of the above-recited will, as they do hereby testify and declare, and they have accordingly applied to and requested the said [*donees*], by virtue of the power in that behalf vested in them by the hereinbefore-recited will, to appoint other trustees in the room of them the said [*retiring trustees*] respectively: AND WHEREAS the said [*donees*], in consequence of such request, have applied to and requested the said [*new trustees*] to become trustees of the hereinbefore-recited will in the room of the said [*retiring trustees*], which they the said [*new trustees*] have severally consented and agreed to do. NOW THIS INDENTURE WITNESSETH, that, for the purpose of effectuating the intention of the said parties respectively, and in consideration of the premises, the said [*donees*], by virtue and in execution of the power and authority given and reserved to them in and by the will of the said [*testator*] deceased as aforesaid, and of every other power and authority enabling them in this behalf, *Do* by this present writing under the respective hands and seals of the said [*donees*], and attested by the two credible witnesses whose names are hereunder written, nominate and appoint the said [*new trustees*] respectively, in the room and stead of the said [*retiring trustees*], to be trustees of the will of the said [*testator*] deceased, in respect of and for the purpose of managing, carrying on, and executing such and so many of the trusts, powers, authorities, and purposes, expressed and declared concerning the real

Parties.

Recital of will, &c.;

—that trustees were desirous of being discharged;

—that new trustees had, on the application of donees, consented to undertake the trusts;

Testatum:

In pursuance of power, donees appoint new trustees.

14. FREEHOLDS AND PERSONAL ESTATES.

and personal estate of the said [*testator*] deceased, respectively devised and bequeathed in and by his said will, as are now subsisting, undetermined, or capable of taking effect.

Further *testatum*:

AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the intention of the said parties respectively, and in consideration of the sum of 10*s.* of lawful British money, paid by the said [*new trustees*] to the said [*retiring trustees*], at or before the execution of these presents, (the receipt whereof is hereby acknowledged),

Retiring trustees, by the direction of donees, release to new trustees,

they the said [*retiring trustees*], at the request and on the nomination and appointment of the said [*donees*], testified by their respectively signing and sealing hereof, *Do* by these presents bargain, sell, release, and convey unto the said [*new trustees*] and their heirs, (in the actual possession of the said [*new trustees*] now being by virtue of a bargain and sale [made to them by the said [*retiring trustees*], in consideration of 5*s.*, by indenture] bearing date the day next before the day of the date of these presents, [for one year, computed from the day next before the day of the date of the said indenture, and by force of the statute made for transferring uses into possession]); All and singular the

freehold hereditaments.

freehold messuages, lands, tenements, and hereditaments, whether in possession, reversion, remainder, or expectancy, which are now vested in the said [*retiring trustees*] upon the trusts of the hereinbefore-recited will of the said [*testator*] deceased, whether as absolute owners or as mortgagees, or otherwise; And all the estate, &c.; To

Habendum,

HAVE AND TO HOLD the messuages, lands, tenements, and hereditaments hereby released, or otherwise assured, or intended so to be, with their appurtenances, unto the said [*new trustees*], and their heirs, for ever; To

To the use of new trustees, upon the trusts of the will.

THE USE of the said [*new trustees*], their heirs and assigns, for ever: *Upon and for the trusts*, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, upon, for, with, under, and subject to which the same would, under and by virtue of the hereinbefore-recited will, or otherwise, be held, or be subject or liable to, in case this present indenture had not been made or executed, and the names of the said [*new trustees*] had in the said will been inserted instead of the names of the said [*retiring trustees*].

Further *testatum*:

AND THIS INDENTURE ALSO WITNESSETH, that, for further effectuating the intention of the said parties respectively, and in consideration of the pre-

14. FREEHOLDS AND PERSONAL ESTATES.

mises, the said [*retiring trustees*], at the request and on the nomination and appointment of the said [*donees*], testified as aforesaid, *Do* by these presents bargain, sell, assign, and transfer unto the said [*new trustees*], their executors, administrators, and assigns, *All and singular* the leasehold messuages, lands, tenements, and hereditaments; And also all and singular the moneys, securities for money, credits, goods, chattels, and other personal estate and effects whatsoever and wheresoever, and of what nature or kind soever, which are now vested in the said [*retiring trustees*], upon or subject to the trusts of the hereinbefore-recited will, with the appurtenances to the said premises respectively belonging; And all the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, of them the said [*retiring trustees*], in and to the said premises; To HAVE AND TO HOLD, RECEIVE, TAKE, AND ENJOY the premises respectively hereby assigned unto the said [*new trustees*], their executors, administrators, and assigns, henceforth for all the respective residues now unexpired of the several estates, terms, and interests for which the same premises are respectively held, or as and for the absolute goods, chattels, and effects of the said [*new trustees*], their executors, administrators, or assigns, according to the nature thereof respectively; *Upon the trusts* nevertheless, and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, upon, for, with, under, and subject to which the same would, under and by virtue of the hereinbefore-recited will, or otherwise, be held, or be subject or liable to, in case this present indenture had not been made or executed, and the names of the said [*new trustees*] had, in the said will, been inserted instead of the names of the said [*retiring trustees*]. AND for the more effectually carrying into effect the purposes hereinbefore expressed, the said [*retiring trustees*], at the request and on the nomination and appointment of the said [*donees*], testified as aforesaid, do hereby severally make, constitute, and appoint the said [*new trustees*], and the survivor of them, his executors or administrators, to be the true and lawful attorneys and attorney of them the said [*retiring trustees*], with full power and authority, in the names of the said [*retiring trustees*], or otherwise, as the case may require, but for the benefit and at the sole risk, costs, and charges of the said trust estate, to ask, demand, sue for, recover, and receive from all and every person or persons whom it may concern, all

Retiring trustees, by the direction of donees, assign to new trustees, Personalty:

Habendum to new trustees,

Upon the trusts of will.

Letter of attorney.

14. FREEHOLDS AND PERSONAL ESTATES.

and singular the credits, sums of money, and other the premises hereby assigned, or intended so to be, and to give valid acquittances and discharges for the same, and from time to time to commence and prosecute such actions, suits, or other proceedings, either at law or in equity, as shall be deemed requisite and expedient for the purposes aforesaid, and such proceedings at pleasure to abandon or discontinue, at the will and pleasure of the said attorneys or attorney; And also with full power and authority to appoint a substitute or substitutes for all or any of the purposes aforesaid, and such substitution from time to time to revoke, as often as the said attorneys or attorney shall think proper: And all and whatsoever the said attorneys or attorney, or their or his substitute or substitutes, shall lawfully do or cause to be done in the premises, the said [*retiring trustees*] respectively hereby undertake and agree to ratify and confirm.

Covenant by retiring trustees to transfer stock in the funds to the new trustees.

And for the considerations aforesaid, each of them the said [*retiring trustees*], so far as respects himself and his own acts only, *Doth* hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*new trustees*], their executors, administrators, and assigns, that they the said [*retiring trustees*] shall and will, immediately after the execution of these presents, at the costs and charges of the said trust estate, transfer, or cause or authorize to be transferred, All and singular such parts of the personal estate hereinbefore assigned as consist of stock in the public funds or parliamentary annuities, unto and into the joint names of the said [*new trustees*], which said [*new trustees*], and the survivor of them, his executors or administrators, or other the trustees or trustee for the time being, of the said will, shall accordingly thereupon, and from thenceforth, stand and be possessed of and interested in the said stocks, funds, and securities, and the dividends, interest, and annual produce to arise therefrom, Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, upon, for, with, under, and subject to which the same would, under and by virtue of the hereinbefore-recited will, or otherwise, be held or be subject or liable to, in case the present indenture had not been made or executed, and the names of the said [*new trustees*] had in the said will been inserted instead of the names of the said [*retiring trustees*], (*and that they* [*the retiring trustees*] *have not incumbered*). In witness &c.

15. DEED *Poll* (*indorsed on Marriage Settlement*), *nominating* ADDITIONAL TRUSTEE, *and also* APPOINTING £1,000, *Three per Cent.* CONSOLS, *under a* POWER (*a*).

15. OF ADDITIONAL TRUSTEE, AND APPOINTMENT OF TRUST FUND.

Exordium.

TO ALL TO WHOM THESE PRESENTS SHALL COME, the within-named [*donee*] SENDS GREETING: WHEREAS the said [*donee*] is desirous, as well of nominating a new and additional trustee to act in the trusts of the within-written indenture, under and by virtue of the power in that behalf reserved to her, as also of exercising the power thereby also reserved to her of appointing the £1,000, Three Pounds per centum Consolidated Annuities comprised in and settled by the said indenture. NOW THESE PRESENTS WITNESS, that the said [*donee*], by virtue and in pursuance and execution of the power or authority given or reserved to her in this behalf, in and by the within-written indenture, and of every other power or authority enabling her thereunto, *Doth* by these presents, sealed and delivered by her the said [*donee*], in the presence of and attested by the two credible witnesses whose names are hereunder written, nominate and appoint [*new trustee*], of ——, gentleman, to be a trustee for all the trusts and purposes expressed and declared in and by the within-written indenture, in addition to, and in conjunction with, the within-named [*old trustees*], or other the trustees or trustee for the time being, or otherwise (*b*), and to the end and intent that henceforth the said

Recital of donee's intention to exercise her powers.

Testatum.

Donee, by virtue of power, appoints new trustee,

(*a*) This combination of purposes is convenient, as preventing the necessity of two deeds. In the present instance, it will be observed, the trustees do not join in the deed nominating the new trustee for the purpose of declaring the trusts, as in several former precedents; so that they ought to execute a separate instrument for this purpose, the terms of which will be, that they stand possessed of the trust-fund upon the trusts declared, as well by the original settlement, as by this appointment made in pursuance thereof.

Remarks upon the precedent in the text.

(*b*) This precedent is given in conformity to the suggestion made *ante*, p. 510, as to the expediency of enabling the donee of a power of appoint-

15. OF ADDITIONAL TRUSTEE, AND APPOINTMENT OF TRUST FUND.

[*new trustee*] shall have and be invested with the same or the like powers and authorities, and be entitled to the benefit of the same indemnities and privileges, as if he had been originally named a trustee in the said indenture; And the said [*donee*] doth hereby accordingly authorize, empower, and direct the said [*old trustees*] to transfer into the joint names of them the said [*old trustees*] and [*new trustee*], in the proper books at the Bank of England, the £1,000, Three Pounds per centum Consolidated Annuities, which are subject to the trusts of the said indenture as aforesaid. AND THESE PRESENTS FURTHER WITNESS, that, the said [*donee*] by virtue and in pursuance and execution of the power or authority given or reserved to her in this behalf, in and by the within-written indenture, and of every other power or authority enabling her thereunto, *Doth* by these presents, sealed and delivered by her the said [*donee*] in manner aforesaid, absolutely and irrevocably direct and appoint, that, from and immediately after the decease of her the said [*donee*], the said £1,000, Three Pounds per centum Consolidated Annuities, and the dividends thenceforth to arise therefrom, or any other the funds and securities on which the moneys to arise from the said annuities shall, for the time being, under the powers in that behalf contained in the within-written indenture, happen to be invested, and the dividends, interest, or produce to arise from the last-mentioned funds and securities, from time to time after the decease of the said [*donee*] as aforesaid, shall remain, continue, and be unto and for the absolute benefit of [A.], [B.], [C.], and [D.], the four children of the said [*donee*], in the proportions and manner following, (that is to say): to her son, the said [A.], the sum of £5 (*c*), part of the said £1,000, Three Pounds per centum

—and directs transfer of fund to him.

Further *testatum:*

Donee, by virtue of power, appoints 1,000*l.* Three per cent. Consols among her children in certain proportions.

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ing new trustees to add to the existing trustees, although there shall have been no defection from the original number.

Stat. 1 Will. 4, c. 46, respecting illusory appointments.

(*c*) In this instance, the donee avails herself of Sir *E. B. Sugden's* act respecting illusory appointments, (stat. 1 W. 4, c. 46), enabling the donee of a power of distribution to exercise the power in favour of the objects, by apportioning the subject among them in *any* shares, however unequal, instead of being obliged, as before, to give to each object a substantial share. The act is intituled, "*An Act to alter and amend the law relating to illusory appointments:*" and recites that, "By deeds, wills, and other instruments, powers are frequently given to appoint real and personal property amongst several objects, in such manner that none of the objects can be excluded by the donee of the power from a share of

Consolidated Annuities; unto and equally between her sons, the said [B.] and [C.], the sum of £200, other part of the said £1,000, Three Pounds per centum Consolidated Annuities; and as to £795, the remaining part of the said £1,000, Three Pounds per centum Consolidated Annuities, to the said [B.] and [C.], upon the trusts following, (that is to say) (*d*); Upon trust that the said [B.] and [C.], or the

15. OF ADDITIONAL TRUSTEE, AND APPOINTMENT OF TRUST FUND.

Part of the fund

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such property; and whereas appointments in exercise of such powers, whereby an unsubstantial, illusory, or nominal share of the property affected thereby is appointed to, or left unappointed to devolve upon, any one or more of the objects thereof, are invalid in equity, although the like appointments are good and binding at law: And whereas considerable inconvenience hath arisen from the rule of equity relative to such appointments, and it is expedient that such appointments should be as valid in equity as at law." The statute then enacts: "That no appointment, which from and after the passing of this act shall be made in exercise of any power or authority to appoint any property, real or personal, amongst several objects, shall be invalid or impeached in equity, on the ground that an unsubstantial, illusory, or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power; but that every such appointment shall be valid and effectual in equity as well as at law, notwithstanding that any one or more of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or nominal share of the property subjected to such power.

Illusory appointments shall be valid in equity as well as at law.

Sect. 2. "Provided always, and be it further enacted, That nothing in this act contained shall prejudice or affect any provision in any deed, will, or other instrument creating any such power as aforesaid, which shall declare the amount of the share or shares from which no object of the power shall be excluded.

Not to affect any deed which declares the amount of the share;

Sect. 3. "Provided always, and be* further enacted and declared, That nothing in this act contained shall be construed, deemed, or taken, at law or in equity, to give any other validity, force, or effect, to any appointment, than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to, or left unappointed to devolve upon, any object of such power."

—nor to give any other force to any appointment than the same would have had.

* *Sic.*

As to the doctrine respecting illusory appointments before the passing of the above act, *vide ante*, Vol. 2, p. 524, 2nd ed.

(*d*) This precedent exemplifies a point which is worthy of attention, namely, that when a person, who has a power of appointing a fund among certain objects, wishes to create trusts for the benefit of any such objects, the others should be made trustees for them, as the appointment of any portion of the fund to strangers, for this purpose, would be bad, as exceeding the limits of the power, unless it were made (as it ought) to authorize an appointment to strangers, for the benefit of the objects. In some instances, the parties are mutually made trustees for each other. [A power to appoint personalty among children is well

Suggestion as to the mode of creating trusts under a power of selection or distribution.

15. OF ADDITIONAL TRUSTEE, AND APPOINTMENT OF TRUST FUND.

is appointed to some of the objects in trust for the other.

survivor of them, do and shall receive the dividends and annual produce thereof, and from time to time pay the same into the hands of the said [D.], the daughter of the said [*donee*], during the joint lives of her the said [D.] and [E.], her present husband, for the separate use of the said [D.], free from the control and debts of her said husband, and so that she shall have no power to alien or anticipate the same; and after the decease of either of them the said [D.] and [E.], in case the said [E.] shall be the survivor, then IN TRUST for such person or persons, and for such purposes, and in such manner in all respects, as she the said [D.] shall by deed or will direct or appoint; and in default of such direction or appointment, or in case the said [D.] shall survive the said [E.] her said husband, then IN TRUST for the said [D.], her executors, administrators, and assigns. AND the said [*donee*] doth hereby direct and declare that the said [B.] and [C.], and the survivor of them, shall have the same power of selling the £795, Three Pounds per centum Consolidated Annuities hereby appointed as lastly aforesaid, and of varying the funds and securities on which the moneys arising therefrom shall from time to time happen to be invested, as are in and by the within-written indenture given to the trustees for the time being of the said within-written indenture in respect of the said £1,000, Three Pounds per centum Consolidated Annuities, whereof the said £795, Three Pounds per centum Consolidated Annuities hereby appointed, form part as aforesaid. IN WITNESS &c.

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exercised by an appointment to the husband of a daughter as such husband, although the interest appointed is reversionary. *Bristow* v. *Ward*, 2 Ves. jun. 331; *Hewett* v. *Lord Dacre*, at the Rolls, T. T. 1837, MS.]

16. [CONVEYANCE *and* ASSIGNMENT *of various* TRUST ESTATES *and* PROPERTIES *by a* TRUSTEE QUITTING THE COUNTRY, *to a* SUBSTITUTE *to* PERFORM *the* TRUSTS (*a*). (*A concise Form*).

16. VARIOUS TRUST ESTATES BY TRUSTEE QUITTING THE COUNTRY.

THIS INDENTURE, made the —— day of ——, BETWEEN [*trustee*], of &c., of the one part; and [*substitute*], of the other part: WHEREAS the said [*trustee*], having on various occasions been appointed a trustee by several deeds, wills, and other instruments, now stands seised and possessed of divers manors, messuages and tenements, lands, hereditaments, real and personal estate, for various estates and interests, and subject to various trusts for the benefit of the persons respectively interested therein. AND WHEREAS the said [*trustee*] intending shortly to go abroad, and being desirous to prevent any inconvenience which might arise by his absence from England to any person for whom he is a trustee, and knowing the said [*substitute*] to be a person in whom confidence may properly be reposed, has deemed it expedient to convey and assign all such estates and interests as are now vested in him the said [*trustee*], in trust for any other person or persons, unto the said [*substitute*], his heirs, executors, or administrators and assigns, respectively, according to the nature of such estates and interests, upon and subject to such and the same trusts, respectively, as the same are now held upon and subject to by the said [*trustee*]. NOW THIS INDENTURE WITNESSETH, that, in consideration of the motives and inducements aforesaid, and of 10*s.* already paid to him by the said [*substitute*], the said [*trustee*] *Doth* hereby grant, bargain, sell, and release unto the said [*substitute*], his heirs and assigns, in the actual possession &c., ALL AND SINGULAR the manors, messuages, farms, lands, rectories, tithes, advowsons, rents, tenements,

Parties.

Recital of seisin and possession of trust property;

—of intention to go abroad, and to appoint substitute.

Testatum:

for nominal consideration, trustee releases to substitute,

Parcels.

(*a*) [It scarcely needs to be observed, that this is not a change of trustees, but a mere appointment of a deputy for the trustee, who retains his character and liability as such; and that a conveyance and assignment like the above should only be made to a person in whose discretion and integrity the trustee has the most absolute confidence.]

16. VARIOUS TRUST ESTATES BY TRUSTEE QUITTING THE COUNTRY.

hereditaments, and real estate whatsoever, and wheresoever situate, lying, and being or arising, of or to which the said [*trustee*] is now solely or entirely seised or entitled for any estate of freehold or inheritance in possession or reversion, in trust for any other person or persons, or for any purpose or purposes whatsoever; And all the estate, &c.; TO HAVE AND TO HOLD the same premises unto and to the use of the said [*substitute*], his heirs and assigns, for ever, or for all other the respective estates and interests of the said [*trustee*] therein; but, nevertheless, upon, for, and subject to such and the same trusts, intents, and purposes, respectively, as the same are now held upon, for, and subject to by the said [*trustee*] at the time of the sealing and delivery of these presents.

Habendum.

Further *testatum:*

Trustee assigns personal estate.

AND THIS INDENTURE FURTHER WITNESSETH, that, for the consideration aforesaid, the said [*trustee*] *Doth* hereby assign, transfer, and set over unto the said [*substitute*] ALL AND SINGULAR the leasehold estates, goods, chattels, chose in action, and other personal estates and property of what kind or nature soever, of or to which the said [*trustee*] is now solely possessed or entitled, for any estate or interest in trust for any other person or persons, or for any purpose or purposes whatsoever, (such purpose or purposes not being for his own sole benefit); with power to the said [*substitute*], his executors, administrators, and assigns, as the attorney and attorneys, substitute and substitutes, of the said [*trustee*], to demand, sue for, and recover, and to give valid receipts and discharges for any part or parts of the premises lastly hereinbefore assigned or intended so to be, TO HAVE, HOLD, RECEIVE, AND TAKE, and to stand possessed of or entitled to the last-mentioned premises and every part thereof, unto the said [*substitute*], his executors, administrators, and assigns, for all the respective terms, estates, and interests of him the said [*trustee*] therein, upon, for, and subject to such and the same trusts, intents, and, purposes, respectively, as the same now are held by or belong to the said [*trustee*], upon, for, or subject to, at the time of the sealing and delivery of these presents. (*Covenant by trustee that he has not incumbered*). IN WITNESS &c.

Power of attorney.

Habendum:

Upon trusts.

NOTICES (a).

General remarks upon notices.

WERE it not that in several parts of the work reference has been made to the present title, the Editor would have felt disposed to omit it altogether, because so little attention to technical form is requisite in preparing notices, that they do not seem to constitute a necessary part of a collection of precedents. All that is requisite, where the object of the notice is to communicate a fact, (and the instruments usually denominated notices seldom have any other operation), is, that the fact should be correctly and clearly stated. The subsequent forms of notices will be found, for the most part, to be suggested by the provisions contained in the precedents, or the doctrines discussed in the dissertations and notes of the present work. The transactions to which they relate are, principally, between grantor and grantee of annuity; landlord and tenant; mortgagor and mortgagee; partners; and vendor and purchaser; and they are classed accordingly. In many cases, it was not essential that the notice should be in *writing;* an oral notice would have been sufficient; but it is always advisable to make a written rather than an oral communication, for the sake of facility of proof; and, for the same reason, a notice should be delivered, not by the person on whose behalf it is given, but by a third person who should keep a copy, on which he should indorse a memorandum, shewing when and to whom he delivered it. The delivery, when practicable, should be to the party to whom it is addressed, personally.

Notices do not require to be stamped.

(a) [As to the effect of notice to purchasers, &c., and their agents, *vide ante*, Vol. 5, p. 488.]

NOTICES.

PRECEDENTS.

1. RE-PURCHASE OF ANNUITY.

1. GRANTOR *of Annuity to* GRANTEE, *of Intention to re-purchase.*

I HEREBY give you notice, that, pursuant to a power contained in an indenture of grant of annuity, bearing date the —— day of ——, executed by you to me, I intend to re-purchase the said annuity at the expiration of three calendar months from the date hereof. And that I shall be prepared to pay to you at that time all arrears of the said annuity, together with the sum of £——, the price stipulated for the redemption thereof by the terms of the said indenture. As WITNESS my hand, this —— day of ——.

To Mr. [*Grantee*]. (Signed) [*Grantor*].

2. TO TENANT TO QUIT.

2. LANDLORD *to* TENANT *from Year to Year, to quit on a prescribed Day* (*a*).

I HEREBY give you notice to quit, and deliver up to me on the —— day of ——, 18—, the possession of all that mes-

(*a*) *Vide ante*, Vol. 4, p. 409, 2nd ed. In the absence of any express agreement respecting the power of determining the tenancy by notice, it may be determined by either party, at the expiration of any year of the tenancy, by giving half a year's notice, which half year is computed in the customary manner:—Thus, a tenancy commencing at Lady-day may be determined by a notice delivered on or before the preceding Michaelmas-day, without regard to the number of days intervening between the two periods. *Roe* d. *Durant* v. *Doe*, 4 M. & P. 391.

suage or tenement, situate in —— street, in the city of ——, held by you of me as tenant from year to year. As witness my hand, this —— day of ——, 18—. 2. TO TENANT TO QUIT.

To Mr. [*Tenant*]. (Signed) [*Landlord*].

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3. LANDLORD *to* TENANT *from Year to Year, determining Tenancy, the Time of the Commencement of which is unknown.* 3. TO TENANT TO QUIT (SPECIAL).

I HEREBY give you notice, and require you, to quit and deliver up to me the possession of the —— farm and lands in the parish of ——, in the county of ——, now held of me by you as tenant from year to year, at the expiration of the year of your tenancy, which shall expire at or next after the end of one half-year from the date hereof (*a*). As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Tenant*]. (Signed) [*Landlord.*]

(*a*) It not unfrequently happens, where persons have been in possession for a long period, under a tenancy from year to year, originally created by oral agreement, that the landlord is unable to ascertain at what period it commenced, particularly if, pending the tenancy, the ownership in the property has changed hands. In such a case, the landlord cannot safely give a notice to quit in terms more specific than those of the precedent in the text, which has been held to be sufficient. *Doe* d. *Phillips* v. *Butler*, 2 Espin. 589; *Doe* d. *Campbell* v. *Scott*, 4 Moore & Pay. 20; [*Doe* v. *Smith*, 5 Ad. & Ell. 350]; *et vide ante*, Vol. 4, p. 415, 2nd ed. It throws upon the tenant the task of finding out when the tenancy commenced, and delivering up the possession accordingly, on pain of being ejected, or made liable to pay double the annual value to the landlord, under the statute 4 Geo. 2, c. 28. *Vide ante*, Vol. 5, p. 446, 2nd ed. The form of course might easily be adapted to the converse case of the tenant determining the tenancy under similar circumstances. [A notice to quit at a period at which the tenancy does not expire, given by the tenant under an erroneous impression, does not determine the tenancy, although accepted by the landlord; being bad as a notice to quit, and bad as a surrender, because it is to take effect *in futuro*. *Doe* v. *Milward*, 3 Mee. & Welsb. 328.] As to notices to quit, where the time of the commencement of the tenancy is unknown.

4. BY TENANT OF QUITTING.

4. TENANT *from Year to Year to* LANDLORD, *of quitting.*

I HEREBY give you notice that I shall quit and deliver up to you on the —— day of ——, 18—, the possession of all and singular the messuage, farm, and lands, in the parish of ——, in the county of ——, now held by me of you as tenant from year to year. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Landlord*]. (Signed) [*Tenant.*]

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5. DETERMINING LEASE.

5. LESSEE *to* LESSOR, *determining* LEASE (*a*).

IN pursuance of a power contained in an indenture of lease executed by you to me, bearing date on or about the —— day of ——, I hereby give you notice that it is my intention to determine the same on the —— day of ——; and that I shall deliver up to you the possession of the messuage and tenement therein comprised, on the said —— day of ——. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. (Signed) [*Lessee*].

(*a*) *Vide ante*, Vol. 4, p. 439, 2nd ed.

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6. TO LESSEE TO REPAIR.

6. LESSOR *to* LESSEE *to Repair.*

PURSUANT to a covenant contained in the indenture of lease executed by me to you, bearing date on or about the —— day of ——, I hereby give you notice and require you to put the messuage or dwelling-house thereby demised in complete and substantial repair; and particularly, that you (*enumerate any particular acts*). As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessee*]. (Signed) [*Lessor*].

7. LESSEE *to* LESSOR, *of Intention to call for a Renewal of* LEASE (*a*). 7. OF INTENTION TO RENEW LEASE.

I HEREBY give you notice, that, in consequence of the decease of [A. B.], one of the *cestuis que vie* named in the indenture of lease executed by you to me, bearing date the —— day of ——, it is my intention, pursuant to the covenant or provision for renewal therein contained, to accept and take a renewed lease of the messuage therein comprised; and I nominate my son [*son*], aged —— years on the —— day of ——, as the substituted *cestui que vie* to be named in such renewed lease; and I further give you notice, that I am ready to surrender my present lease, and to pay the premium or fine for the granting of the said renewed lease, as required by the said covenant for renewal. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. (Signed) [*Lessee*].

(*a*) *Vide ante*, Vol. 4, p. 481, 2nd ed.

8. LESSEE *to* LESSOR, *of assigning* LEASE (*a*). 8. TO LESSOR, OF ASSIGNMENT.

I HEREBY give you notice, that, by an indenture of assignment already prepared, and intended to be executed forthwith, and to bear even date herewith, and made, or purporting to be made, between me of the one part, and [*intended assignee*] of the other part, the messuage, being No. —, in —— place, in the parish of ——, in the county of ——, demised by you to me, is intended or expressed to be assigned by me to the said [*intended assignee*], his executors, administrators, and assigns, for all the residue of the term granted by you to me. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. (Signed) [*Lessee*].

(*a*) This form supposes that the lessee is bound to give the notice previously to the assignment. Where the requisition is, that he shall give notice within a definite time afterwards, *ut ante*, Vol. 4, p. 434, 2nd ed., (and which seems to be the better mode), the terms of the notice of course will be varied accordingly.

9. ASSIGNEES OF BANKRUPT DECLINING LEASE.

9. ASSIGNEES *of* BANKRUPT, LESSEE *to* LESSOR, *of their Intention to decline* LEASE (*a*).

WE hereby give you notice, that we, as assignees of [*bankrupt*], of ——, a bankrupt, decline taking the leasehold farm and lands, situate at ——, whereof the said bankrupt is lessee. As WITNESS our hands, this —— day of ——, 18—.

To Mr. [*Lessor*]. (Signed) [*Assignees*].

(*a*) *Vide ante*, Vol. 4, p. 390, 2nd ed. If the notice is by the bankrupt, of course the language of it must be varied accordingly.

10. OF LESSEE'S INTENTION TO PURCHASE THE FEE.

10. LESSEE *to* LESSOR, *of Intention to purchase the* INHERITANCE, *pursuant to a Power in the* LEASE (*a*).

I HEREBY give you notice, that, pursuant to a power contained in the indenture of lease, dated the —— day of ——, 18—, executed by you to me, of certain messuages and hereditaments in the parish of ——, in the county of ——, I elect and agree to purchase the inheritance in fee-simple of the said premises, at the price or sum of £——, and that I shall be prepared to pay to you the said purchase-money, and in all respects to comply with the terms prescribed by the said indenture of lease, on the —— day of —— next, on your executing to me an effectual conveyance and assurance of the said premises in fee-simple, free from all incumbrances; for which purpose I now send you the draft of a deed of conveyance, which I request you to return to my solicitor, with a notification of your approbation thereof, or any objections you may have thereto, in sufficient time to admit of the completion of the purchase at the time aforesaid. And I request that you will forthwith deliver to me an abstract of the instrument or instruments, if any, affecting the title, since the granting of the said lease, and that you will be prepared to deliver to me the title-deeds of the said premises, on the payment of the purchase-money

(*a*) *Vide ante*, Vol. 4, p. 552, 2nd ed.

as aforesaid (*b*). As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Lessor*]. (Signed) [*Lessee*].

10. OF LESSEE'S INTENTION TO PURCHASE THE FEE.

(*b*) This notice, and the power in the precedent of the lease referred to, *supra*, to which it is adapted, seem to suppose the title to have been known to, and accepted by, the intended purchaser when the lease was granted. Where this is not the case, a sufficient interval should be allowed for the examination of the title, an abstract of which should be delivered to the lessee within a definite period after the intimation of his intention to become the purchaser.

As to investigation of title by purchasing lessee.

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11. LANDLORD *to* SHERIFF, *of Rent being due from* TENANT, *whose Goods he has taken in Execution* (*a*).

11. LANDLORD TO SHERIFF.

I HEREBY give you notice, that the sum of £——, being the amount of one year's rent to the 29th day of September last, is owing to me from [*execution debtor*], for the messuage and warehouse, situate in —— street, in the city of ——, in his occupation, as my tenant from year to year. As WITNESS my hand, this —— day of ——, 18.

To ——, Esq. (Signed) [*Landlord*].
Sheriff of the county of ——.

(*a*) *Vide ante*, Vol. 5, p. 75, 2nd ed.

The stat. 8 Ann. c. 14, has been held to apply, where the execution debtor is an under-tenant of apartments only. *Thurgood* v. *Richardson*, 5 Moore & Payne, 270.

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12. MORTGAGEE *to* TENANT, *to pay the Rent to him* (*a*).

12. TO TENANT TO PAY RENT TO MORTGAGEE.

I HEREBY give you notice, that, by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, made between [*mortgagor*], of ——,

(*a*) [As to the right of a mortgagee to rent under lettings prior and posterior to the mortgage, respectively, *vide ante*, Vol. 5, p. 358.]

12. TO TENANT TO PAY RENT TO MORTGAGEE.

of the one part; and me, the undersigned [*mortgagee*], of the other part; the messuage in your occupation was conveyed by the said [*mortgagor*] to me, my heirs and assigns, for ever, by way of mortgage, for securing £500 and interest, and the same is now absolutely vested in me by virtue of the same indentures. And I require you to pay to me all the arrears of rent now due, and the rent hereafter to become due, in respect of the said premises. As WITNESS my hand, this —— day of ——, 18—,

To Mr. [*Tenant*]. (Signed) [*Mortgagee*].

13. RECEIVER TO TENANT.

13. RECEIVER *for Mortgagee, to* TENANT.

I HEREBY give you notice, that, by indentures bearing date respectively the —— and —— days of —— last, made between [*mortgagor*], of ——, of the first part; [*mortgagee*], of ——, of the second part; and me, the undersigned [*receiver*], of the third part; the messuage and piece of ground situate in the parish of ——, in the county of ——, in your occupation, were, with other hereditaments, conveyed and assured by the said [*mortgagor*] unto and to the use of the said [*mortgagee*], his heirs and assigns, for ever, [for securing the sum of £—— and interest]; and, by the same indenture, full power and authority were given to me, as the agent and receiver of the said [*mortgagee*], to receive the rents thereof, and to give effectual discharges for the same. And I accordingly require you to pay to me the rent now due, and hereafter to become due from you, in respect of the said premises accordingly. As WITNESS my hand, this —— day of ——.

To Mr. [*Tenant*]. (Signed) [*Receiver*].

14. SECOND TO FIRST MORTGAGEE.

14. SECOND *to* FIRST MORTGAGEE.

I HEREBY give you notice, that, by indenture of underlease, bearing date on or about the —— day of ——, made

between [*mortgagor*], of the one part; and me, the undersigned [*mortgagee*], of the other part; the several messuages and pieces of ground, situate in ——, now in mortgage to you, were demised to me by the said [*mortgagor*], for the residue of the term of ninety-nine years, for which he holds the same, except the last day of the said term, for securing the sum of £—— and interest. As WITNESS my hand, this —— day of ——.

14. SECOND TO FIRST MORTGAGEE.

(Signed) [*Second mortgagee*].

To Mr. [*First mortgagee*].

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15. ASSIGNEE *of a* REVERSIONARY INTEREST *in* MONEY *in the* FUNDS, *to the* TRUSTEES *in whose Names the* STOCK *is standing* (*a*).

15. ASSIGNEE OF REVERSIONARY INTEREST TO TRUSTEES.

I HEREBY give you notice, that, by an indenture bearing date the —— day of ——, and made between [*assignor*], of &c., of the one part, and me, the undersigned [*assignee*], of the other part; all the share, right, and interest of the said [*assignor*], under and by virtue of the last will and testament of [*testator*], of ——, deceased, of and in the sum of £2,500 Three Pounds per centum Consolidated Annuities, now standing in your names at the Bank of England, and held by you, subject to the trusts of the said will, were assigned by the said [*assignor*] to me, my executors, administrators, and assigns, upon the trust therein mentioned, for securing certain moneys advanced by me to the said [*assignor*], and interest (*b*). As WITNESS my hand, this —— day of ——, 18—.

To Messrs. [*Trustees*]. (Signed) [*Assignee*].

(*a*) As to the necessity and effect of giving such a notice, *vide ante*, Vol. 5, p. 458 *et seq.*

(*b*) Where notice or intimation is given of a fact, the person receiving it is bound to inform himself of all the legal consequences resulting from that fact, the rule being *ignorantia legis non excusat;* and, therefore, it is unnecessary for the person giving the notice to point out any act to be done, or omitted to be done, by the person receiving it. (The words inserted in brackets in the text, in some of the precedents, are

Persons giving notice not bound to point out the duty of the person receiving it.

15. ASSIGNEE OF REVERSIONARY INTEREST TO TRUSTEES.

generally of this kind). Oftentimes, however, it may be advisable to throw in a few words, as explanatory of some point of duty of the person to whom it is addressed, especially where such duty is not so obvious as to exclude the probability of its being misapprehended. Thus, in the present case, one of the effects of an assignment by a person taking a partial interest in a particular fund seems to be, to incapacitate him from concurring in appointing new trustees, varying funds, &c., (*vide ante*, Vol. 5, p. 160 *et seq.*), or exercising any other powers by which such interest is liable to be affected; and yet this is a point which is very likely to escape attention. If, therefore, by the instrument creating the interest which is the subject of the assignment, any such powers are to be exercised by or with the concurrence of the assignor, it may be proper to add the following clause to the notice in the text:—

"And I hereby give you notice not to transfer the said £2,500 Three Pounds per centum Consolidated Annuities to any new trustee or trustees, or change the investment, by virtue of any power contained in the said will, or exercise any other power or authority whatsoever therein contained affecting the share or interest of the said [*assignor*] in the said Three Pounds per centum Consolidated Annuities without my consent in writing.

16. MORTGAGEE OF BOND, TO OBLIGOR.

16. MORTGAGEE *of* BOND, *to* OBLIGOR.

I HEREBY give you notice, that, by an indenture of assignment bearing date on or about the —— day of —— last, made between [*obligee*], of ——, of the one part, and me, the undersigned [*mortgagee*], of the other part, a bond or obligation executed by you to the said [*obligee*], bearing date the —— day of ——, 18—, conditioned for the payment of the sum of £—— and interest, was assigned by the said [*obligee*] to me, [for securing certain moneys owing by him to me, and interest thereon (*a*)]; And in the said indenture is contained a letter of attorney, authorizing me to receive and give discharges for the said principal sum and interest. As WITNESS my hand, this —— day of ——.

To Mr. [*Obligor*]. (Signed) [*Assignee*].

(*a*) If it were wished not to mention the object of the deed, the words in brackets should be omitted.

17. MORTGAGOR *to* MORTGAGEE, *of Intention to pay off* MORTGAGE DEBT (*a*). 17. OF PAYING MORTGAGE DEBT.

I HEREBY give you notice, that I shall pay the principal sum of £—— and interest owing from me to you, secured by an indenture of mortgage bearing date the —— day of ——, at the expiration of six calendar months from the date hereof. As WITNESS my hand, this —— day of ——.

To Mr. [*Mortgagee*]. (Signed) [*Mortgagor*].

(*a*) Mortgagees, from courtesy, frequently give a similar notice of their being about to call in the money; but such notice, unless made necessary by the special terms of the deed, is not requisite; they may pursue any of their remedies for the recovery of the money, at any time after the day fixed for its payment, without previous notice.

18. MORTGAGEE *with* POWER *of* SALE *to* MORTGAGOR, *of Intention to* SELL, *unless* PRINCIPAL *and* INTEREST MONEYS *be paid at a certain Time.* 18. MORTGAGEE TO MORTGAGOR OF HIS INTENTION TO SELL.

I HEREBY give you notice, that, unless the principal and interest moneys (*a*), owing to me by virtue of the indenture of mortgage executed by you to me, bearing date on or about the —— day of ——, 18—, be paid at the expiration of —— calendar months from the date hereof (*b*), I shall immediately thereupon proceed to a sale of the messuages and hereditaments in the said indenture comprised, in execution of the power thereby vested in me. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Mortgagor*]. (Signed) [*Mortgagee.*]

(*a*) Add, "and costs," if any.

(*b*) *Vide* precedent, *ante*, Vol. 5, p. 566. This notice, if for a shorter period, would, of course, be a waiver of the six months' notice which a mortgagee is entitled to previously to the payment of his money.

19. SURETY TO CREDITOR TO STOP ADVANCES.

19. SURETY MORTGAGOR *to* CREDITOR, *to prevent further Advances to* PRINCIPAL (*a*).

I HEREBY give you notice not to advance any further sum or sums of money to [*debtor*], by virtue of the in-

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As to the right of a surety to retract his undertaking.

(*a*) What would be the precise effect of a notice of this kind, perhaps, is not very clear; the question being, how far a person who has entered into an engagement to be answerable for advances made to a third party is at liberty at all times to recall that engagement. The question, of course, must depend upon the construction of the instrument creating the liability. Supposing it to contain (as is commonly the case) nothing beyond the general undertaking to be responsible for all advances to the principal to a certain extent, though the terms of the engagement might seem to be absolute, yet it is probable that the surety would be at liberty to stop the advances, for it could scarcely be intended that his liability was to go on for an indefinite time. It would be well, however, if deeds of this kind more explicitly indicated the actual intention in regard to the point. [See as to the duration of the liability of a surety to a partnership, *Pemberton* v. *Oakes*, 4 Russ. 154.] The books do not contain many authorities which touch upon a surety's right to put an end to the contract by which his responsibility is created. In *Shepherd* v. *Beecher*, 2 P.W. 233, the facts shortly were as follow: A., on the apprenticing of his son, gave a bond in the penalty of £1,000 for his son's fidelity. The son embezzled £200, which the father paid, at the same time desiring the master for the future not to trust his son with the cash. The master, however, disregarded this intimation, and the apprentice embezzled a large sum, which the father was held to be liable to pay to the extent of the penalty of the bond, (less the £200 already paid), though the master delayed calling for the son's accounts until two years after the expiration of the apprenticeship. So, in the case of *Gordon* v. *Calvert*, 2 Sim. 253 [3 Man. & Ryl. 124], where A., B., and C., in May, 1820, executed a joint and several bond to F. & Co., conditioned to be void if B., as the clerk of F. & Co., should, during his continuance in their service, duly account for all moneys received by him. B. was taken into the service of the firm, not for any definite time, but only for so long as the parties respectively pleased. A. died, and upon his decease his executrix gave notice to F. & Co. that she should not consider herself to be any longer liable as a surety for B.; whereupon F. & Co. called upon B. to procure another surety; which he did, by causing a similar bond to be executed by E. This bond recited the death of A., and that F. & Co. had proposed to B. that E. should enter into a bond as an additional security. C. and E. both died, as did B., after whose death it was discovered that there was a deficiency in his accounts. The amount of this deficiency was now claimed from A.'s executrix, who resisted the claim on the ground that E.'s bond had

denture of mortgage executed by me to you, bearing date the —— day of ——, 18—, as I shall hold myself not to be responsible for any moneys advanced to him after this notice. As WITNESS my hand this —— day of ——, 18—.

19. SURETY TO CREDITOR, TO STOP ADVANCES.

To Messrs. [*Bankers*], (Signed) [*Surety*].
London.

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been substituted for A.'s; but Sir *L. Shadwell*, V. C., was of a contrary opinion. He said, that, by the original contract, the liability of the surety was to continue so long as F. & Co. kept B., or he chose to remain in their service; that, after F. & Co. had received the plaintiff's letter, they never gave her any intimation that they did not consider her as continuing liable under A.'s bond; that their conduct did not operate in any manner upon her. [Affirmed, 4 Russ. 581. See *Hough* v. *Ware*, 1 Car. & P. 151.]

20. OBLIGEE *of* BOND *to* ASSIGNEE, *calling upon him to sue* (*a*).

20. OBLIGEE TO ASSIGNEE OF BOND.

PURSUANT to a provision in that behalf, contained in a deed of assignment by way of mortgage dated on or about the —— day of ——, whereby a certain bond or obligation of [*obligor*], of ——, was assigned by me to you upon certain trusts therein mentioned, I hereby require you forthwith to commence proceedings at law against the said [*obligor*] upon the said bond, [and I give you notice, that I shall consider you to be responsible for any loss that may arise from your delay to do so after this notice.] As WITNESS my hand this —— day of ——, 18—.

To [*Mortgagee*]. (Signed) [*Mortgagor*].

(*a*) *Vide ante*, p. 250.

21. TO DISSOLVE PARTNERSHIP.

21. ONE PARTNER *to another, of Intention to dissolve* PARTNERSHIP.

UNDER and by virtue of the power in this behalf contained in the deed or articles establishing the partnership subsisting between you and me, bearing date on or about the —— day of ——, 18—, I hereby give you notice, that it is my intention to dissolve the said partnership on the —— day of —— next. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Partner*]. (Signed) [*Partner*].

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22. TO DISSOLVE PARTNERSHIP.

22. ONE PARTNER *to another, dissolving* PARTNERSHIP, *in consequence of* BREACH *of* ARTICLES.

I HEREBY give you notice, that, in consequence of your having broken the —— article of our partnership deed, bearing date the —— day of ——, whereby it is provided (*transcribe article*), I hereby, in pursuance of the power in that behalf contained in the said deed, dissolve the said partnership from the —— day of —— next, on which day I shall be prepared to pay you the amount declared to be the value of your share in the partnership effects at our last annual settlement of accounts, and interest thereon, as provided by the said partnership deed. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Partner*]. (Signed) [*Partner*].

23. ONE PARTNER *to another, dissolving a* PARTNERSHIP, *subsisting without* DEED (*a*). 23. DISSOLVING PARTNERSHIP.

I HEREBY give you notice, that the partnership subsisting between you and me in the trade or business of —— is hereby dissolved; and I request that you will concur with me in taking the necessary steps for winding up the affairs of the said joint concern, in order that all the engagements thereof may be forthwith discharged, and the remaining effects disposed of and converted, and the moneys arising therefrom divided between us in proportion to our respective shares therein. As WITNESS my hand this —— day of ——, 18—.

To Mr. [*Partner*]. (Signed) [*Partner*].

(*a*) As to oral partnerships being dissoluble by either partner, *vide post*, Vol. 7, title PARTNERSHIP.

24. OF *Dissolution of* PARTNERSHIP, *to be inserted in the* LONDON GAZETTE. 24. ADVERTISEMENT OF DISSOLUTION OF PARTNERSHIP.

NOTICE is hereby given, that the partnership lately subsisting between us in the city of Bristol, in the trade or business of merchants, was this day dissolved by mutual consent (*or* "effluxion of time," *or otherwise, as the case may be*). As WITNESS our hands, this —— day of ——, 18—.

(Signed) [A. B.]
[C. D.]

25. PARTNERS, *after Dissolution of* PARTNERSHIP, *to a* DEBTOR *of the Firm to pay Debt to the joint Agent of the Partners.* 25. TO DEBTOR, OF DISSOLUTION OF PARTNERSHIP.

WE hereby beg leave to give you notice, and intimate to you, that the partnership lately subsisting between us, under

25. TO DEBTOR, OF DISSOLUTION OF PARTNERSHIP.

the firm of —— & Co., was dissolved on the —— day of —— last, and we request you to pay the debt owing by you to us to Mr. [*receiver*], who is duly authorized to receive the same, and whose receipt shall be your sufficient discharge. As WITNESS our hands, this —— day of ——, 18—.

To Messrs. [*Debtors*]. (Signed) [A. B.]
[C. D.]

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26. PURCHASER *of an* EQUITY *of* REDEMPTION, *to* MORTGAGEE.

26. PURCHASER OF EQUITY OF REDEMPTION, TO MORTGAGEE.

I HEREBY give you notice, that, by indentures of lease and release, bearing date respectively the —— and —— days of —— last respectively, made between [*vendor*], of ——, of the one part, and me, the undersigned [*purchaser*], of the other part, all and singular the lands and hereditaments situate in the parish of ——, in the county of ——, now in mortgage to you from the said [*vendor*], for securing £1,000 and interest, were, for a pecuniary consideration, absolutely conveyed and assured unto and to the use of me, the said [*purchaser*], my heirs and assigns, for ever, subject to your said mortgage thereon. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Mortgagee*]. (Signed) [*Purchaser*].

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27. TO *produce* TITLE-DEEDS *pursuant to Covenant* (*a*).

27. TO PRODUCE TITLE-DEEDS.

I HEREBY give you notice, and require you, to produce to Mr. [*solicitor*], of ——, gentleman, on the —— day of —— next, on his application at your residence in the city of ——, all the deeds and writings mentioned or referred to in an indenture dated the —— day of ——, by which the same were covenanted to be produced by you to me, my

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(*a*) *Vide ante*, Vol. 4, p. 8, 2nd ed.

heirs or assigns, the said [*solicitor*] being the solicitor of [*purchaser*], of ——, to whom I have contracted to sell part of the hereditaments purchased by me of you; and I hereby undertake to pay you the reasonable costs and charges which may attend the production of the said deeds and papers, on your informing me of the amount thereof. As WITNESS my hand, this —— day of ——, 18—.

27. TO PRODUCE TITLE-DEEDS.

To Mr. [*Covenantor*]. (Signed) [*Covenantee*].

28. LEGATEE *to* EXECUTORS, *of Assignment of Legacy* (*a*).

28. LEGATEE TO EXECUTORS, OF ASSIGNMENT.

I HEREBY give you notice, that, by an indenture of assignment bearing date on or about the —— day of ——, instant, made between me, the undersigned [*legatee*], of the one part; and [*purchaser*], of ——, of the other part; the legacy of £500, bequeathed to me by the will of [*testator*], deceased, whereof you are executors, and which will become payable on the decease of [A. B.] has been absolutely assigned by me to the said [*purchaser*], for a valuable consideration; [and I authorize you to pay the said legacy, and the interest (if any) thereon, to the said [*purchaser*], when the same shall become payable]. As WITNESS my hand, this —— day of ——, 18—.

To Messrs. [*Executors*]. (Signed) [*Legatee*].

(*a*) A notice of this kind, of course, may be given either by the assignor or assignee, or by both, or by the agent of either or both. The advantage of its proceeding from the assignor is, that he thereby recognizes the validity of the assignment, affording, therefore, an additional authority to the person to whom it is directed. The notice, however, is more commonly given by the assignee, for whose protection it is required.

29. [PURCHASER *to* VENDOR, *of his Readiness to complete his Purchase.*

29. PURCHASER, OF READINESS TO COMPLETE PURCHASE.

WHEREAS, in and by a certain contract or agreement in writing, bearing date the —— day of ——, 18—, and

29. PURCHASER, OF READINESS TO COMPLETE PURCHASE.

made between &c., IT IS WITNESSED, that, in consideration of the sum of £——, you the said [*vendor*] did sell unto me all those premises, situate in ——, known by the name of ——, then in your possession, together with all the appurtenances, and every advantage thereto belonging. And it was further agreed, that the said premises should remain in your possession until the said purchase-money should be paid; and such purchase-money was to be paid at Lady-day, Midsummer, Michaelmas, or Christmas, next ensuing the date of the said agreement, at your option. AND WHEREAS I was ready and willing, at any time from and after the date and execution of the said contract, to pay the purchase-money thereby agreed to be paid by me, on having such a title made to me of the same premises as I should be advised was safe and proper, of which I frequently gave you notice; AND WHEREAS you having, from time to time, up to the month of January last past, neglected, and positively refused to carry your said contract or agreement into effect, I was advised to, and actually did, give notice of the said contract or agreement to Messrs. [*A. & B.*], of ——, who held a demise, by way of mortgage, in trust for sale of the said premises, for the term of 1,000 years, made and executed to them by [*T. W.*], late of —— aforesaid, your deceased father, for securing the sum of £——, and interest. AND WHEREAS the said [*A. & B.*], having, on the —— day of —— last, assigned and transferred the said premises to me, for the residue of the said term of 1,000 years, in consideration of £—— by me paid to them, being the amount of the principal money and interest due to them on mortgage of the said premises, in Easter Term now last past, as assignee of the said [*A. & B.*], I delivered an ejectment against you the said [*T. W.*], to recover the possession of the said premises, and judgment having been obtained in the said action, possession of all and singular the said premises was delivered to me, by the sheriff of the said county of [*Devon*], on the —— day of ——, and I am now in the peaceable and quiet possession thereof. AND WHEREAS, the said premises having been held by you in fee-simple, subject to the said mortgage to the said [*A. & B.*], and your brother [*J. W.*] being the heir-at-law of your said father, it is necessary that the last will and testament of your said late deceased father, by which the said premises were devised to you, should be produced for my satisfaction;

29. PURCHASER, OF READINESS TO COMPLETE PURCHASE.

And you having been married to your present wife, [*wife's name*], previously to the 1st of January, 1834, your said wife is entitled to dower out of the said premises. Now, I do hereby give notice to you, that I am now, as I have always been, ready to carry the said consent or agreement into execution; and that, relying on the faith thereof, it is my intention immediately to pull down the dwelling-house, out-houses, and buildings on the said premises, and to erect others in lieu thereof, for my own accommodation and convenience. And I do further give you notice, that, when and as soon as you shall produce to me the last will and testament of your said deceased father, or the probate copy thereof, that I shall be willing and desirous, after being allowed the principal money and interest due to, and the costs and charges and expenses incurred by me, as assignee of the said mortgage, to pay you whatever balance may be due to you, (if any), of the said sum of £——, if it shall appear by the said will, that the same premises were devised to you thereby. And I do hereby lastly give you notice, that I shall require your said wife to do such acts as may be requisite to bar her right and title to dower, of, in, and to the said premises, or to be allowed a fair and reasonable compensation and satisfaction therefore. As WITNESS my hand, this —— day of ——, 18—.

To Mr. [*Vendor*]. (Signed) [*Purchaser*].

30. PURCHASER *to* VENDOR, *that his Money is producing no Interest* (*a*).

30. TO VENDOR, OF MONEY BEING IDLE.

I HEREBY give you notice, that the sum of £——, the unpaid portion of the purchase-money, payable by me to you under the contract between us, bearing date the —— day of ——, is now in the hands of my bankers, Messrs. ——, having been appropriated to a special account to my credit, and is producing no interest or advantage whatsoever, [and therefore I shall hold myself discharged from any obli-

(*a*) As to this, *vide post*, Vol. 7, p. 396, 2nd ed.

30. TO VENDOR, OF MONEY BEING IDLE.

gation henceforth to pay interest for the same]. As WITNESS my hand, this —— day of ——, 18—.

To [*Vendor*]. (Signed) [*Purchaser*].

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31. OF APPOINTMENT OF REFERREE.

31. PURCHASER *to* VENDOR, *of Appointment of* REFERREE *to value Fixtures* (*a*).

I HEREBY give you notice, that, pursuant to the contract entered into on the —— day of ——, for the purchase by me, of you, of a messuage or dwelling-house, situate in ——, and the fixtures therein, I have appointed [*arbitrator*] as my nominee, to make the valuation of the said fixtures; [and I beg to remind you, that, unless you also nominate some person on your behalf to concur with the said [*arbitrator*] in making such valuation, within —— days, my said arbitrator is empowered to proceed therein alone]. As WITNESS my hand, this —— day of ——, 18—.

To [*Vendor*]. (Signed) [*Purchaser*].

(*a*) *Vide post*, Vol. 7, p. 422, 2nd ed.

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32. TO TRUSTEES, TO CHANGE SECURITIES.

32. CESTUI QUE TRUST *to* TRUSTEES, *calling upon them to sell* STOCK, *and place out* MONEYS *on Mortgage* (*a*).

I HEREBY authorize and request you to sell the sum of £—— Three Pounds per centum Consolidated Annuities, now

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(*a*) A *cestui que trust* is generally required merely to "consent" to the transfer of the trust funds from one security to another, which seems to imply acquiescence, rather than active interference; but, in truth, the intention is, that the choice of the investment shall reside in him; and trustees ought to feel great confidence in the eligibility of continuing the existing investment, if they refuse to change it at the call of the party whose "consent" to such change is required. Trustees in such cases seldom do more than act upon the wishes of the parties beneficially interested.

32. TO TRUSTEES, TO CHANGE SECURITIES.

standing in your names, as trustees of the will of [*testator*], my late husband, deceased, and to lend the moneys arising therefrom to [*intended mortgagor*], on the mortgage security of two leasehold messuages, situate in ——, held for the remainder of a term of seventy years, commencing in the year 1804, and respectively subject to the several ground rents of £—— and £——. As WITNESS my hand, this —— day of ——, 18—.

To [*Trustees*]. (Signed) [*Cestui que trust.*]

PARTITION(a).

PRELIMINARY REMARKS.

PARTITION.

General observations on the partition of estates.

THE inconveniences resulting from real estate being held in undivided shares, are such, that usually one of the first considerations which occupy the attention of persons to whom property of this kind has devolved, is, how a partition of it can be best effected. If settlors were apprised of the great expense and trouble attending the division of their estates into numerous portions, and the dissension to which a joint ownership in property generally gives rise in families, they would be less disposed than they commonly are to limit their estates among children or others in this manner. Where the donor's intention is to dispose of his estate, for the benefit of several objects in aliquot shares, especially if they be numerous, or the intended gift is to a class embracing an unascertained number, this purpose may be best accomplished by vesting the property in trustees for sale, giving the *produce* of the sale only among the intended donees. This would not prevent their taking the property in its actual state, if they all concurred in calling upon the trustees to suspend the sale, and convey it to them; but it renders necessary the concurrence of all to *prevent* a sale, instead of such concurrence being requisite in order to *effect* it, as would be the case if the property itself were limited directly to the persons intended to be benefited. This is a salutary alteration, because a sale is generally the most advantageous mode of dealing with the property for all; and therefore, it is desirable that it should not be frustrated by the incompetency or unwillingness of any one of the parties to concur.

Partition by mutual consent.

Where all the joint owners of an estate are desirous to make a

(a) [Such parts of these preliminary Remarks on *Partition*, as are inclosed within braces { }, are taken from Mr. Bythewood's article on Partition in the first volume of the former editions, p. 193.]

PARTITION.

partition, and are personally competent to bind their interests, no judicial proceeding is requisite to carry that intention into effect. They have only to agree on the allotments to be made to the respective parties, and execute mutual conveyances. It is very usual in such cases to refer it to some person or persons, to divide the estate into as many equal portions as there are aliquot shares, the parties casting lots for the choice of the allotments, or else the allotments are absolutely fixed by the result of the ballot, without the exercise of any choice by either party. Where the parties intend to invest their referee with the discretionary power of fixing the allotments, it is sometimes advisable that they, instead of entering into an agreement to execute conveyances in obedience to the award, when made, should all join in conveying the entirety of the property directly to the proposed referee, upon trust to convey the several allotments to the respective parties, according to his award. By this means the necessity of any further act of the parties, and consequently any inconvenience arising from the refusal of any of them to concur, is avoided. If any of the joint owners are unwilling to concur with the rest in making partition, or are, by reason of minority or mental imbecility, incapable of concurring, or for any other cause they cannot come to an amicable arrangement for dividing the estate, it is necessary to resort to proceedings, either at law or in equity, for effecting a partition.

The subject may be treated under the following divisions:—

1. *Partition by Conveyance*, 569.
2. *By Writ of Partition at Common Law*, 580.
3. *By Bill in Equity*, 581.
4. *By Act of Parliament*, 593.
5. *Stamp Duty on Partitions*, 595.

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1. By conveyance, &c.

PARTITION BY CONVEYANCE.

At common law.

{At the common law, estates of freehold, either corporeal or incorporeal, could not be voluntarily partitioned by joint-tenants without a deed. Litt. s. 290; Co. Litt. 169. a., 187. a. Tenants in common, however, might have made a partition by parol without deed, if, as to corporeal estates, they afterwards perfected the partition in severalty by livery of seisin, Co. Litt. 169. a.; and coparceners, whether of lands lying in livery or in grant, and although of lands situate in different counties, might have made a partition by parol without deed; Litt. s. 250; Co. Litt. 169. a.; and joint-tenants for years might have made partition by parol without a deed. Dyer, 350 b, pl. 20; Co. Litt. 187. a.; *Vide* Roberts on Frauds, 283.

Since the Statute of Frauds.

Since the statute of frauds and perjuries, a *writing* is necessary to

PARTITION BY CONVEYANCE.

perfect a partition of lands among tenants in common or coparceners, though, as to joint-tenants in fee, a *deed* is necessary now, because it was so at common law. Phillips on Evidence, 439, 4th ed. Mr. Cruise, following Sir Wm. Blackstone, must be mistaken when he says, "The statute of frauds has abolished this distinction, and made a *deed* equally necessary in all cases." 4 Cru. Dig. 96, s. 16, 2nd ed.; 2 Bla. Com. 324; and see *Johnson* v. *Willson*, Willes, 248, 253.} [And if, upon partition between coparceners, a rent be granted to one, out of the allotment of another, by way of equality of partition, such grant is good without deed, and carries with it a power of distress. Litt. 252.]

Proper conveyance from one joint-tenant to another.

{The proper mode of conveyance from one joint-tenant to another, and the most effectual to sever the joint-tenancy, either of the whole or part of the *immediate freehold* of lands, is a *release*, (*Chester* v. *Willan*, 2 Saund. 97); livery or what is equivalent to it, not being necessary, because each has a *seisin* in every part and the whole, *per mie* (*b*) *et per tout.* Litt. s. 288; Hawk. Abr. Co. Litt. 271, 7th ed. Yet conveyancers, from an abundance of caution, generally adopt the lease and release, because that is the usual modern way of conveying real estates, whether the lease be necessary or not, and from a fear that the joint-tenancy might have been severed, to meet that case by creating an estate by lease capable of being enlarged by release. However, the lease is rarely necessary.

Where there were three joint-tenants for life, and one of them by deed "granted, bargained, sold, assigned, set over, and confirmed" to another of them all the right, estate, title, interest, claim, and demand of the grantor, of and to the lands held in jointure, it was adjudged without argument, on special verdict, that this deed was sufficient to pass the part or share of the joint-tenant to the other. *Chester* v. *Willan*, 2 Saund. 96 a. And the Chief Justice said, that though the *jury* found that he *granted*, yet the Court would adjudge that he *released*, which is the proper conveyance for one joint-tenant to pass his estate to the other.

(*b*) *Mie*, *mi*, or *my*; a contraction for *moitié*, the half, or one of several equal parts: *cœqua vel media pars.* Cowel, *Moyety.* *Et vide* Litt. s. 277; Kelham, *mi*, et *my.* When this became a technical expression, it is probable a joint-tenancy was not usual between more than two persons; after it became common between three or more persons, the word *moitié* was retained, though in strict propriety in the latter instance, *partie* should have been used instead.

A *moiety* was frequently used by the writers of Shakespere's age, as a portion of anything, though not divided into two equal parts; and Shakespere commonly uses it for *any part of division*, though the strict sense of the word *moiety* is *half, one of two equal parts.* Shakespere, Vol. 4, p. 464; Vol. 8, p. 339, in the edition of 1811. See *Halfendeal*, Cowel's Interpreter.

PARTITION BY CONVEYANCE.

As coparceners, including heirs in gavelkind, have, as well as joint-tenants, privity of estate and possession, (Co. Litt. 163. b.; 169. a.; 175. b.; 2 English Copyholder, 425; and are seised *per my et per tout*, Bro. Abr. *Distresse*, pl. 37), it seems the proper conveyance between them is a release. However, coparceners may convey to each other, either by release or feoffment. Gilb. Ten. 73; Perk. s. 193; Harg. n. Co. Litt. 169. a. (2).

Conveyance between coparceners and heirs in gavelkind.

But as tenants in common have only between them a privity in possession, and not in estate, Co. Litt. 169. a., they cannot release to each other the immediate freehold of lands, without previously creating an estate capable of enlargement by release, as by a bargain and sale for years; because a release by way of *mitter le estate* supposes the releasee to have some estate in the whole of the lands released to him; but tenants in common, in supposition of law, have several distinct undivided freeholds in every part of the lands, and one of them cannot transfer any part to the other without livery of seisin, or what is equivalent to it. Co. Litt. 200. b.; 3 Bac. Abr. 694, *Joint-tenants*, &c., (1) 3, (2); Gilb. Ten. 73-4; Hawk. Abr. Co. Litt. 365.

Conveyance between tenants in common.

Partition may be made of things lying in grant, as of a reversion, that one shall have the reversion of other acres. F. N. B. 62 D; Co. Litt. 169. a.; 16 Vin. Abr. 217. *Et vide* Fearne's Posthumous Works, 243, as to severing a joint-tenancy of a vested remainder.

Partition of things in grant.

As livery of seisin cannot be had of things lying in *grant*, the proper conveyance of *incorporeal* hereditaments, namely, advowsons, tithes, commons, ways, offices, dignities, franchises, and rents, and of the reversions and remainders of lands from one joint-tenant to another, is a release; from one tenant in common to another, a grant; from one coparcener, or heir in gavelkind, to another, either a release or grant. The existence of these incorporeal hereditaments is merely in idea and abstracted contemplation; though their effects and profits may be frequently objects of our senses: 2 Bl. Com. 20, *et vide* Co. Litt. 9. a.: and a remainder or a reversion of lands, being only a present right to a future enjoyment of the possession, has in the same manner no existence but *in jure et intellectu*.

Conveyance on partition of things in grant.

If a manor descend to coparceners and a partition be made, and the *entire demesnes* are allotted to one, and the services to another, the manor is then *suspended*, for neither of them has any other than a nominal manor; but if one of them die without issue, and the demesnes descend to her who has the services, or *vice versâ*, the manor is revived again; because on the partition they were *in* by

As to partition of a manor.

PARTITION BY CONVEYANCE.

act of law, and the manor was only suspended, and was not extinct, and the demesnes and services were united again by act of law. *Earl of Gloucester's case*, Bro. Abr. *Extinguishment*, pl. 13; 6 Co. 64 a; 2 Roll. Abr. 122, (F.) pl. 3, (H.); 15 Vin. Abr. 222, 224. So it is said if a partition be made of a manor between two coparceners, and on the partition each has part of the demesnes and part of the services, because each of them is in by act of law, each of them has a manor, not in name only, but in reality and in name; *Sir Moyle Finch's case*, 6 Co. 64 a; Co. Cop. s. 31, Tr. 52, 53; 2 Roll. Abr. 122 (G.); because they were compellable to make partition by common law, being in by descent. But it is otherwise by joint-tenants, for they are in by purchase, and were not compellable by common law to make partition. *Marshe* v. *Smith*, 1 Leon. 27. So, if a man has a manor, and he grant part of the demesnes and part of the services to another, the grantee shall not have a manor, because a man by his own act cannot create a manor at this day: and thus it appears that *fortior et potentior est dispositio legis quam hominis*. *Sir Moyle Finch's case*, 6 Co. 64; Gilb. Ten. 210; *Morris* v. *Smith*, 1 Cro. 38. However, the doctrine that coparceners after partition shall have several manors is rather doubtful, because it was held in *The Queen* v. *The Duchess of Bolton*, 6 Mod. 151, that a manor is an entire thing, and not severable: and common sense seems to oppose the doctrine, because there might by possibility be ten coparceners, in which case, if the doctrine were followed, there might be ten manors made from one manor. After a partition of the demesnes and services, either by joint-tenants, tenants in common, or coparceners, it seems that they may hold *one* joint Court Baron.

Partition by coparceners in tail.

A partition of lands intailed between coparceners, if it be equal at the time of the partition, will bind the issue in tail. Co. Litt. 173. b.

Partition by husband and wife, she being coparcener in fee.

The *husband* of a coparcener in fee-simple may make an *equal* partition of the estate in coparcenery in yearly value; but the wife must be a party to the partition, otherwise it will not bind her nor her heirs. Bro. Abr. *Partição*, pl. 1 and 28. If the partition be unequal, it will bind the husband, but it will be *voidable* by the wife or her heirs, after the husband's death, and consequently may be *confirmed* by the wife or her heirs after his death, by leasing or taking possession of the unequal part, receiving the rents, or doing any other act amounting to a confirmation of an estate which is not *void*, but voidable. Co. Litt. 170. b., 171. a.; *et vide* 4 Bac. Abr. 13, Gwill. ed. *Leases* (C); 7 Ibid. 64, *Void and voidable;* Serjt. Wil-

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liams's note, 2 Saund. 180 (9); 1 Roper, Husband and Wife, 93; Com. Dig. *Confirmation*, (A) (D 1); *Baron and Feme*, (S 1). And a coparcener and her husband may grant a rent in fee for equality of partition out of her part, if the partition be equal. Co. Litt. 169. b. And the reason of this anomaly contrary to the general principles of the law, that a husband cannot do any act to affect the inheritance of his wife, Lord *Coke* says, is, that husbands and wives are compellable by [the common] law to make partition; and that which they are compellable to do in this case by law they may do by agreement without process of law; but it is contrary of joint-tenants, for they are in by purchase, and were not compellable by the common law to make partition; and therefore, upon partition between them, a rent cannot be *reserved* for equality of partition. *Marshe* v. *Smith*, 1 Leon. 27.

Husband or wife may grant rent for equality of partition.

So an equal partition will bind an infant coparcener, because a writ of partition lies in such case at common law; Co. Litt. 171. a.; but an unequal partition is *voidable*, either during infancy, or afterwards; yet it may be confirmed. Litt. s. 258. A *prochein amy*, or a guardian of an infant, can only make an equal partition to continue during the infancy. Bro. Abr. *Partiçion*, pl. 1: *sed vide* some loose cases *contra*, 2 Roll. Abr. 256 (E) pl. 1, 3, and 4; 16 Vin. Abr. 222 (E).

Equal partition binds infant coparcener.

But in all these cases of partition, by deed taking effect under the principles of the common law, by tenants in tail, husband and wife in right of a wife seised in fee, and infants, who are *coparceners*, to make it binding, nothing more than a partition should be made; the course of descent should not be altered; the estate should not be conveyed to uses; a married woman or an infant should not thereby attempt to gain a power over the lands, to be executed during their disabilities, by a mere deed or writing.

On partition by coparceners, tenants in tail, &c., nothing further should be done.

Partitions by deed, by tenants in tail, *femes covertes*, and infants, who are joint-tenants, or tenants in common, are governed by the same rules as conveyances, or other acts done by them.

Consequently, to effect a partition by deed of the estate of a tenant in tail, or a married woman who is a joint-tenant or tenant in common, the deed must be acknowledged or inrolled to make it binding on the woman and her heirs, or on the heirs in tail. And to avoid the uncertainty of a possession depending on the doubtful circumstance, whether a partition was equal at the time of making it, even tenants in tail, and husband and wife seised in fee in right of the wife of an estate in coparcenary, should employ the mode of conveyance now substituted for a recovery or a fine.

Partition by deed, by infant, &c., joint-tenants, and tenants in common, governed by common law rules.

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The act of an infant, not strictly authorized by law, is not to be depended on.}

Implied warranty on partition.

[As to the *warranty* implied on partition by deed between coparceners, see Co. Litt. 174. a., 384. a.; Litt. s. 262; Noy's Maxims, 25, 61, 5th ed.; 78, 156, 9th ed.; *Bustard's case*, 4 Co. 121 b. By the stat. 3 & 4 Will. 4, c. 27, s. 39, it is enacted, That no warranty which may be made after the 31st of December, 1833, shall defeat any right of entry or action for the recovery of land. Sect. 36 of the same statute abolishes the writ of *Warrantia chartæ*. (See Fitz. N. B. 134). And by the stat. 3 & 4 Will. 4, c. 74, s. 14, all warranties of land, which shall be made on or after the above-mentioned day by any tenant in tail thereof, shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeazance of the estate tail.]

Parol agreement for partition.

{A *parol agreement* for a partition, put in execution, and acquiesced in for a long time, will be enforced by a court of equity, if the persons who made the agreement had a right to contract; but an agreement for a partition, by the husband of a joint-tenant, and consequently of a tenant in common in fee, will not bind the inheritance of his wife; *Ireland* v. *Rittle*, 1 Atk. 542; nor by the husband of a coparcener, unless she be a party to it. Co. Litt. 169. b. Mr. Hargrave, n. Co. Litt. 171. a., (2), seems to have mistaken *Ireland* v. *Rittle*. The doctrine of Littleton and Lord Coke only extends to coparceners.

A parol partition between tenants in tail has been decreed to bind the issue in tail. 2 Vern. 233.

And a parol partition by the guardian of an infant tenant in common, who confirmed it by granting leases of the entirety of his allotment after he came of age, and acquiesced in it for seventeen years, the lessees of the other tenant in common having made improvements on the faith of the title being in severalty, was held to have raised an equity which prevented the interposition of the court to disturb what has been done. And the plaintiff is not entitled to a commission for a partition, but only to a conveyance in pursuance of the parol partition. *Whaley* v. *Dawson*, 2 Sch. & Lef. 367.}

Wives of joint tenants are not dowable.

{The wives of joint-tenants are not dowable, because their husband have not a sole seisin. Litt. s. 45; Co. Litt. 37.b.; Hargr. n. Co. Litt. 35. a., (1); Gilb. Uses, 404; 1 Roll. Abr. 676, (G), pl. 4. For the same reason, if a husband joint-tenant make a feoffment or other conveyance of his part to a stranger, his wife will not be dowable of it. F. N. B. 150 K.; Co. Litt. 31. b., *et* n. (4). Yet if

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the husband, on a partition, acquire a sole seisin of the *legal* estate of freehold and inheritance in his part, his wife will become dowable of it: to avoid which, the allotment should be limited to uses to prevent dower. But if the husband's estate in severalty was only an *equitable* or trust estate, as, under an agreement for a partition, the wife was not dowable, a modern trust being the same as a use at common law, of which it appears, from the recital in the statute of *uses*, 27 Hen. 8, c. 10, and the old books, that a widow was not dowable. Perk. s. 349; Dyer, 266 a., pl. 6; 4 Rep. 1 b.; 3 P. Wms. 234; 1 Eden, 196. Yet a husband is allowed curtesy of a trust, contrary to the common law, Perk. s. 457;} and this though the property be limited to the wife's separate use during the coverture. *Morgan* v. *Morgan*, 5 Madd. 408. [But now, by stat. 3 & 4 Will. 4, c. 105, a widow, who was married after the 1st of January, 1834, is dowable of all estates of inheritance in possession, not being joint estates, to which the husband was beneficially entitled in equity, or partly in equity and partly at law.]

Curtesy but not dower of a trust.

{The wives of tenants in common, Litt. s. 45, coparceners, 2 Cru. Dig. 520, and heirs in gavelkind, Co. Litt. 33 b., 111. a.; Robinson's Gavelkind, 159, 2nd ed., are dowable of the shares of their husbands. On a fair and equal partition made by the husband of a tenant in common, coparcener, or heir in gavelkind, his wife would only be dowable of the part received on partition; yet an unequal partition would be voidable *quoad* her dower. To prevent this question, it is advisable to adopt the form of assurance now substituted for a fine or recovery, according to the nature of the case.

Wives of tenants in common, coparceners, and heirs in gavelkind, are dowable.

A *settlement of undivided shares* of freehold, leasehold, or copyhold lands, should always contain, as well as the usual powers of sale and exchange, *a power to make a partition;* and it should enable the trustees to raise any money which may be payable for equality of partition, by sale or mortgage of the property; and if money should be received by way of equality, the power should authorize the trustees to lay it out in the purchase of lands, &c., to be settled to the same uses.} See form of a power *in a will* to concur in making partition, 1 Jarm. Pow. Dev. 693.

Powers in settlement of undivided shares.

{A power of sale is not well executed by a mere partition. *M'Queen* v. *Farquhar*, 11 Ves. 467.} [*Attorney-General* v. *Hamilton*, 1 Madd. 214.]

Power of sale not executed by partition.

{It is *vexata quæstio*, whether a power of exchange in the usual form authorizes a partition.

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Where the power was "to make sale of, and to convey, surrender, and assure to, or convey in exchange, for or in lieu of *other* manors, lands, and hereditaments, the said undivided third part of all or any of the said freehold and copyhold lands, to any person, either together or in parcels, for the best price, &c., in money or *such other equivalent interest* in manors, lands, and hereditaments," as should to the trustees seem proper, the Lords Commissioners inclined to think, and afterwards Lord *Rosslyn* determined, that the power authorized a partition; *Abel* v. *Heathcote*, 4 Bro. C. C. 278; 2 Ves. Jun. 98, *S. C.*; Mr. *Fearne* thought the power authorized a partition, on the ground that the partition was in *effect* an exchange. 2 Sug. Pow. 505.

In *M'Queen* v. *Farquhar*, 11 Ves. Jun. 473, Lord *Eldon*, on the first hearing said, "According to the reason appearing to be given by the Lords Commissioners, one [*qu.* a] power of sale will exclude [*qu.* include] every other power of exchange, partition, &c. It is clear, the converse would not hold. A power to make partition would not include a power to sell, and I think a power of exchanging would not:" on the second hearing, he *doubted* whether a power to exchange is well executed by a partition.

In the *Attorney-General* v. *Hamilton*, 1 Madd. Rep. 214, Sir *Thomas Plumer* inclined to Lord *Eldon's* opinion, and doubted whether a power "to sell or convey in exchange," authorized a partition. Lord *Eldon*, 11 Ves. 475, says, "that on a conveyance to uses, with a power to alter the uses by an instrument, the terms and limitations of which are prescribed by the general law, the new use will not arise except under the very circumstances in which it is contracted that it shall arise."

It seems, a power to exchange does not authorize a partition.

Upon the whole, it seems, *Abel* v. *Heathcote* cannot be supported either under the power of sale, exchange, or the particular wording of the power; at least, it is a very doubtful authority: but the question, whether a *power of exchange* can be executed by a partition, still remains untouched by actual decision. By attending to the reasoning of Lord *Eldon* in *M'Queen* v. *Farquhar*, 11 Ves. 467, there seems to be little doubt, that, whenever the point calls for a decision, it must be determined that it cannot be so executed. *Et vide* 2 Sug. Pow. 505; Eden's note, 4 Bro. C. C. 285.} [*Attorney-General* v. *Hamilton*, 1 Madd. 214.]

Lord *Rosslyn*, *Abel* v. *Heathcote*, (2 Ves. Jun. 101; 4 Bro. C. C. 285), says, "If any person had been ingenious enough to think of this objection at the time of the partition, by making the trustees sell, receive the money, and buy a third of the same estate, the whole

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would have been within the words of the power. They revoked the uses in order to acquire a divided third of the estate, which they have taken in lieu of the undivided part. They might have taken money, rent, or land, anywhere else." Yet this fictitious proceeding would be against the rule, that no act can be done by circuity which cannot be done directly.

Commissioners under inclosure acts may make partition between joint-tenants, or tenants in common, in certain cases.

The General Inclosure Act, 41 Geo. 3, c. 109, s. 16, after reciting that "it may happen, that some of the proprietors of messuages, cottages, tenements, or lands, in any such parish or manor, and persons entitled to allotment or allotments, to be made by virtue of any such act, may be seised thereof or entitled thereto in joint-tenancy, or as coparceners or tenants in common, and cannot, by reason of infancy, settlement, or absence beyond seas, make an effectual division thereof;" enacts, "that it shall be lawful for any such commissioner or commissioners, and he or they is and are hereby authorized and empowered (upon the request in writing of such joint-tenants, or coparceners or tenants in common, *or any* or *either of them*, or of the husbands, guardians, trustees, committees, or attorneys of such as are under coverture, minors, lunatics, or under any other incapacity as aforesaid, or absent beyond seas) to make partition and division of the messuages, cottages, tenements, lands, and allotment or allotments, to such of the said owners or proprietors, who shall be entitled to the same as joint-tenants, coparceners, or tenants in common, and to allot the same accordingly to such owners and proprietors in severalty; and from and immediately after the said allotments shall be so made and declared, the same shall be holden and enjoyed by the person or persons to whom the same shall be allotted in severalty, in such and the same manner, and subject to such and the same uses, as the undivided parts or shares of such estates would have been held, in case such partition and division had not been made."}

Conveyances to uses seem the best mode to effect a partition of freehold or inheritance.

{To effect a partition of estates of *freehold or inheritance*, whether in possession, or in remainder or revision, the best method, because the operation and effect of the lease and release are so well understood, seems to be for all the joint-tenants, tenants in common, coparceners, or heirs in gavelkind, to convey, by lease and release, the particular part allotted to each by a separate deed to a releasee, to the use of the particular person, or to uses to prevent dower. The releasee is a mere conduit-pipe, and there is no need of his joining in any future conveyances; the uses are fed by his seisin, and are executed immediately into legal estates by the statute of uses: or, in more simple terms, the possession of the releasee is drawn to and drowned in the uses by virtue of the statute.

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It may be made by one lease and release.

Another method is, for all of them to convey the entirety to a releasee, by lease and release, and by the release to limit the several particular parts allotted to each, to his use or uses to prevent dower. In this case, the conveyance must necessarily be rather long, and there should be as many parts of the lease and release as there are partitioners, or, at least, each should have an attested or other copy of the lease and release, and they should take a covenant for production of the originals by the person who keeps them; or otherwise, the deeds should be acknowledged by *all* the partitioners, and enrolled; because a copy of the enrolment is not evidence of a bargain and sale for years, or of the contents of any other deed enrolled for safe custody, except as against the party acknowledging the deed; though, against such party, and against all claiming under him, a copy of the enrolment of any deed is admissible in evidence. An examined copy of the enrolment of a bargain and sale of *freehold* in lands and hereditaments, is as good evidence as the original itself. 27 Hen. 8, c. 16; 10 Anne, c. 18, s. 3. See 14 East, 231; *Hobhouse* v. *Hamilton*, 1 Scho. & Lef. 207; Phillips' Evid. 499, 4th ed.; Gilb. Evid. 87, Sedgw. ed.; Bull. N. P. 256. A bargain and sale would be improper where the uses of all the lands are declared by one deed from a joint operative part by the whole of the partitioners, because a man cannot sell to himself; which each party would do in that case, to the extent of his proportionate part in the share allotted to him: besides, uses cannot be declared on a bargain and sale, because a use cannot be raised on a use; and a bargain and sale itself only transfers a use to be executed into a legal estate by enrolment, provided it be done within six lunar months from the date. Gilb. Uses, 99, 295. And therefore any uses declared in the deed on the seisin of the bargainee would be mere trusts, which would also be the case if the release above mentioned were enrolled in order to be pleaded and used as a bargain and sale.}

Deeds acknowledged and enrolled, when evidence.

Partition cannot be made by one bargain and sale.

[A partition, if it went no further, did not operate as a revocation of a devise of the undivided share. *Luther* v. *Kidby*, 3 P. Wms. 270, n.; *Brydges* v. *Shandos*, 2 Ves. Jun. 429; *Harmwood* v. *Oglander*, 6 Ves. 199, 8 Ves. 106; *Maundrell* v. *Maundrell*, 10 Ves. 256; *Goodtitle* v. *Otway*, 7 T. R. 416.]

As to the form of deeds of partition.

In preparing deeds of partition, the draftsman has to consider whether he will make separate conveyances of the several allotments, in which case each party may exclusively have the custody of his own deed, or whether he will include all the allotments in one conveyance, of which, in that case, several parts must be executed, and one part delivered to each party. The latter is, in general, the preferable course, because, the conveyances being mutually executed in

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consideration of each other, persons claiming title to any allotment under them might be required to produce the deed or deeds of conveyance, the execution of which is stated to be the consideration for the conveyance of such allotment, as evidence of such deed or deeds having been executed; and, therefore, mutual covenants for the production of their respective conveyances should be entered into by the parties in such cases. The necessity for this, of course, is avoided by giving to each party one part of the deeds of conveyance of the whole; and it seems to form an equivalent for the increased expense consequent on the greater length of the instrument. In one instance, indeed, a serious additional expense in stamp duty would be incurred by including all the allotments in one deed, namely, where a large sum is given by one of the parties for equality of partition; for as an *ad valorem* duty in such case is payable, as on a purchase, on the sum so paid, unless the sum is under £300, *and as the stamp act subjects all the parts of deeds of exchange and partition* to the same duty, it may be advisable, in such a case, in order to avoid rendering them all liable to the *ad valorem* stamp, to prepare separate conveyances of the allotments. The *ad valorem* duty then attaches only on the conveyance of the party who receives the larger share and pays the money. Thus, if A. is to take Blackacre, and B. is to take Whiteacre, and to receive from A. £1,000, the conveyance by A. would be simply in consideration of the conveyance executed by B., and would be exempt from *ad valorem* duty. The conveyance by B., however, being in consideration as well of the conveyance executed by A. as of the £1,000 paid by him, would be subject to an *ad valorem* duty in respect of that sum.

Suggestion as to stamp duty.

To the completeness of a partition deed, it is, in general, requisite that there should be—1st. An accurate statement of the title of the several partitioners, and a conveyance adapted to their respective interests. 2ndly. A clear and correct delineation of the several portions to be taken in severalty by the parties, which is commonly best effected by a plan. 3rdly. Limitations of these respective portions according to the intentions of the parties. 4thly. Usual and proper covenants for title. The following precedents exemplify these particulars. They are confined, however, to the circumstances of most frequent occurrence. Special deeds of this kind are, in general, of such extreme length and complexity, that a very few of them would have swelled the present volume beyond its allowed bulk, and would be of very limited utility.

Assignment of attendant terms on partition.

{Where there is an attendant term of the lands, it may be assigned by the direction of all the parties, by separate deeds to

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separate trustees, as to, for, and concerning the part allotted to each, *in trust* for him &c., according to the uses of the separate conveyance in fee to him. Or it may be only assigned by one deed, with separate declarations of the trust, as above; or, when the property is of small value, a general declaration, according to the uses, trusts, estates, and interests, declared, &c., by the conveyance in fee of the whole. In either case the above observations, as to one deed or separate deeds, copies and enrolment, equally apply.}

Partition of copyholds should be with lord's consent.

{It is said, that parceners of *copyhold* cannot make partition without the lord's license. Hal. MS., Co. Litt. 59. a, (1); but at the end of Calthorpe's Read. 98, it is said, that it was agreed in the Duchy Chamber, that if two joint-tenants, copyholders in fee, make partition, it is good, and no forfeiture nor alienation. 2 Watk. Cop. [194], (*e*).

However an *agreement* to divide copyhold lands will not operate as a partition, and cannot be enforced in a court of equity, if it be made without the privity of the lord; nor can a defendant claiming under an entail of a copyhold, be compelled to substantiate such an agreement by a preceding tenant in tail. *Oakley* v. *Smith*, Ambl. 368; 1 Eden, 261; Madd. Ch. 248, 2nd ed.

The proper mode of perfecting a partition of copyholds, is a surrender and admission thereupon, which of course is with the consent of the lord.}

Equity will relieve in case of mistake.

It should be observed, that Equity will interfere, (as in other cases), to correct mistakes made by parties in dividing lands. Thus, in a modern case, where a partition had been made between tenants in common by surveyors appointed by them, and eleven years afterwards, when sales had been made by the several partitioners, it was discovered that a piece of ground, which had been allotted to one of the parties, belonged, before the partition, exclusively to him; the court, on a bill filed by him against one of the tenants in common, who had refused to concur with the others in making compensation, decreed a pecuniary compensation to be made. *Dacre* v. *Gorges*, 2 Sim. & Stu. 454.

2. By writ of partition.

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[As to the writ of partition, which lay at common law for a tenant in coparcenary, and was given to tenants in common and joint-tenants by the statutes 31 Hen. 8, c. 1, and 32 Hen. 8, c. 32,

see Bract. 71 b; Litt. ss. 247, 265; Fitzherbert's N. B. 62; Co. Litt. 167, 174. a.; Co. Copyh. 354; Co. Tracts, 125; *Berkeley* v. *Warwick*, Cro. Eliz. 635; *Yate* v. *Windham*, Id. 64; *Moor* v. *Onslow*, Id. 759; 1 Roll. Abr. 162, *Aid* (A) pl. 28, 29; Hob. 8, Comyn's Dig. *Pleader*, (3 F); Cowel, *Partiçion;* 3 Bac. Abr. 699, *Joint-Tenants*, &c. (1) 7; 6 Vin. Abr. 171; 16 Id., *Partition*, (R) 232; Booth's Real Actions, 244; Gilb. Ten. 185; 2 Cru. Dig. 508, 2nd ed.; *Halton* v. *Thanet*, 2 Wm. Bl. Rep. 1134, 1159, Elsley's ed.; *Dyer* v. *Bullock*, 1 Bos. & Pull. 344; *Burrell* v. *Dodd*, 3 Bos. & Pull. 378; and the statutes 8 & 9 Will. 3, c. 31 (*c*); and 3 & 4 Anne, c. 18, s. 2.

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[The proceeding by writ of partition at law had long been practically obsolete, when it was abolished by the stat. 3 & 4 Will. 4, c. 27, s. 36.]

Writ of Partition abolished.

3. By bill in equity.

PARTITION BY BILL IN EQUITY.

{Remedy might formerly have been obtained in the courts of common law for the partition of estates; yet they had a difficulty of proceeding to the full extent of justice; and if the titles of the parties were in any degree complicated, it was extremely difficult to proceed in those courts; and where the tenants in possession were seised of particular estates only, the persons entitled in remainder could not be bound by the judgment in a writ of partition. Mitford's Pleading, 2nd ed. 110. On these considerations, and the almost constant necessity the parties have for a *discovery*, is founded, in analogy to that in the case of Dower, this branch of equitable jurisdiction; in the exercise of which, courts of equity are constantly governed by an anxious attention to the legal title of the plaintiff: for though, at law, it was sufficient to allege seisin, yet, in equity, the plaintiff must shew his title. *Cartwright* v. *Pulteney*, 2 Atk. 380. But the title may be defeasible. *Wills* v. *Slade*, 6 Ves. 498; 1 Fonbl. Treat. Equity, 21, 5th ed. The commission issued by a court of equity is much more convenient than the writ; the valuations of the proportions is much more considered; the interests of all the parties are much better attended to; and it is a work carried on for the common benefit of both. *Calmady* v. *Calmady*, 2 Ves.

Advantages of equitable jurisdiction.

(*c*) There is a similar act passed by the legislature of the Island of Antigua, 50 Geo. 3, No. 621, intituled "An Act for the easier obtaining Partition of Lands and Slaves in Coparcenary, Joint Tenancy, and Tenancy in Common." *Laws of Antigua*, Vol. 3, 201, edit. 1818.

PARTITION BY BILL IN EQUITY.

Jun. 570 : *Agar* v. *Fairfax*, 17 Ves. 552 :} [See *Story* v. *Johnson*, 2 You. & Coll. 586].

Equity makes partition by commissioners.

{It is a thing of constant occurrence for joint-tenants, tenants in common, coparceners, or heirs in gavelkind, to file a bill in the Court of Chancery, praying for a partition of the estate; in which case it is usual for the court to issue a commission for that purpose, to certain persons, who proceed to divide the estate without a jury, and make their return to the court. If not objected to by any of the parties, the court will decree the performance of such partition, and direct the parties to execute proper conveyances to each other of the shares allotted to them. 2 Cru. Dig. 512, 2nd ed.; Hargr. n. Co. Lit. 169. a., (2). Mitford's Pleading, 97, 3rd ed.

Origin of equitable jurisdiction.

The jurisdiction in these cases is not exercised under the authority of any act of Parliament, *Agar* v. *Fairfax*, 17 Ves. jun. 552, but appears to have arisen in *consequence* of the act of the 32 Hen. 8, which made one tenant in common accountable to the other; so that since the statute, they are become, in a manner, trustees the one to the other. So said in argument, 1 Vern. 421.

Mr. Hargrave, in a note to Co. Litt. 169. a., (2), after having stated with his usual clearness and elegant precision the different modes of partition in our own law, and made reference to works on the subject in the English, Civil and Scotch laws, with which the English lawyer would do well to be acquainted, says, "How far this branch of equitable jurisdiction, so trenching upon the writ of partition, and wresting from a court of common law its ancient exclusive jurisdiction over this subject, might be traced by examining the records of Chancery, I know not. But the earliest instance of a bill of partition I observe to be noticed in the printed books, in a case of the 40 Eliz. in Tothill's Transactions in Chancery, title *Partition*, (155, ed. 1820). According to the short report of this case, the court interposed from necessity, in respect of the minority of one of the parties, the book expressing, that on that account he could not be made party to a writ of partition; which reason seems very inaccurate, for, if Lord Coke is right, that writ doth lie against an infant, and he shall have his age in it, and after judgment he is bound by the partition. Co. Lit. 171. b. But probably, in Lord Coke's time this was a rare and rather unsettled mode of compelling partition; for I observe in a case in Chancery of the 6 Car. 1, which was referred to the judges, on a point of law between two coparceners, that the judges certified for issuing a *writ of partition* between them, and that the court ordered one accordingly, which I

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presume would scarce have been done, if the decree for partition, and a commission to make it, had then been a current and familiar proceeding with Chancery. 1 Cha. Rep. 49. However, it appears by the language of the court in a very important cause, in which the grand question was, whether the Lord Chancellor here could hold plea of a trust of lands in Ireland, that in the reign of James the Second bills of partition were become common. 1 Vern. 421; 2 Cha. Cas. 189."

Mr. Fonblanque does not appear quite satisfied with Mr. Hargrave's observations, and has a note on this subject. 1 Treat. Equity, 18, 5th ed.

In the 14 Car. 2, (*Martyn* v. *Perryman*, Chan. Rep. 235), a partition was decreed, notwithstanding *femes covert* and infants, as well as incumbrancers, were concerned. In the reign of James 2, they were become frequent: 1 Vern. 421; 2 Cha. Ca. 189; and in that of his successors, William and Mary, the Chancellor observed, "he did no more question the jurisdiction of the Chancellor in these cases, than he did whether a gift to a man and his heirs were a fee-simple." *Manaton* v. *Squire*, 2 Freem. 26; Madd. Ch. 244, 2nd ed.

The proceeding is only a more commodious and efficacious mode of enforcing the legal right, (Mitf. Plead. 98), where the ownership is legal, and a right by analogy to the legal right, where the ownership is equitable; and on this subject Courts of equity may be considered as having a concurrent jurisdiction with Courts of common law, in cases where no difficulty would have attended the proceeding in these Courts. 1 Ves. & Bea. 555. For, it is to be observed, though the equitable jurisdiction probably arose in consequence of the difficulty attending a partition at law in certain cases, yet it is not confined to such cases, but a partition may be obtained in equity, where the title is purely legal and unembarrassed, and the whole relief might have been had at law.

A suit for partition, it is said, is not an application to the equity of the Court, but the relief sought is demandable as matter of right; *Parker* v. *Gerard*, Amb. 236; 1 Ves. & Bea. 554; *et vide* Suppl. Vin. Ab. 5, 338; but this must be understood with some qualification. At all events, it does not apply so strictly as to prevent the Court from imposing terms upon the party claiming the interference of the Court. Thus, in the case of *Swan* v. *Swan*, 8 Price, 518, the Court of Exchequer compelled the plaintiff in a partition suit to allow for improvements made by the defendant, who had been in the occupation of the premises.

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{It has been observed, that if a plaintiff had a legal title, it was *discretionary* in the court whether they would grant a partition or not; and where there were suspicious circumstances in the plaintiff's title, the court would leave the party to law. *Cartwright* v. *Pulteney*, 2 Atk. 380; and see *Scott* v. *Fawcett*, 1 Dick. 299, and *Baring* v. *Nash*, 1 Ves. & Bea. 556-7.} [But the remedy at law no longer existing, it seems that no discretion now remains in the court]. {The plaintiff must, it appears, state upon the record his own title to a share, *Cartwright* v. *Pulteney*, 2 Atk. 380, and the titles of the defendants; and the better to enable the plaintiff to obtain a judgment for partition, the court will direct inquiries to ascertain who are with him entitled to the property. *Agar* v. *Fairfax*, 17 Ves. 552: *Calmady* v. *Calmady*, 2 Ves. jun. 570.} [The court refused partition of a house held under a lease subject to rent and covenants, on the ground that the landlord might have an injunction to prevent the execution of any partition by any act amounting to waste, and that after partition neither party could be protected by the court from the consequences of breaches of covenant by the other. *North* v. *Guinan*, 1 Beatt. 342. See *Baring* v. *Nash*, 1 Ves. & B. 551. There can be no partition by way of foreclosure at the suit of a person entitled to part of the money due on a mortgage. *Palmer* v. *E. of Carlisle*, 1 Sim. & St. 423; *vide ante*, Vol. 5, p. 436].

Quære, whether equitable partition be matter of right.

Difficulties in the way of partition.

Partition will not be refused on the ground of difficulties, or circumstances arising out of the complex state of the title, or the minuteness of the shares or interests of the parties; but it will, in the first instance, be referred to the Master to ascertain the shares and interests, and a commission will afterwards issue to make the division in those ascertained proportions. *Calmady* v. *Calmady*, 2 Ves. jun. 558; *Agar* v. *Fairfax*, 17 Ves. 533.

Every part of the estate need not be divided.

{On a partition *every part* of the estate need not be divided. If there be three houses, it would not be right to divide each house, for that would be to spoil them; but some recompense is to be made, either by a sum of money, or rent, for equality of partition, to those who have the houses of the least value. *Earl of Clarendon* v. *Hornby*, 1 P. Wms. 446; 3 Cru. Dig. 539, 2nd ed.} *Story* v. *Johnson*, 1 You. & Coll. 438; 2 Id. 586.] {But, if there be but *one* house, there may be a decree for the *partition* of it, though it would be highly inconvenient to the parties. *Turner* v. *Morgan*, 8 Ves. 145, and 11 Ves. 157, and see 1 P. Wms. 447;} [*Story* v. *Johnson*, 2 You. & Coll. 610]; {and where exceptions were taken to the report of commissioners, for the partition of a house among joint-tenants, one party complaining that she could not get to her

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division except by going up stairs, which stairs were allotted to another person, the Chancellor would not interfere. *Anon.*, MS. And where the bill was for a partition of a *cold bath*, it was decreed. *Warner* v. *Baynes*, Ambl. 589; *S. C.*, alluded to in *Parker* v. *Gerard*, Ambl. 236. So it is, if there be but one *mill*, or an *advowson*, to be divided; (as to partition of an advowson, see *Bodicote* v. *Steers*, 1 Dick. 69; *Matthews* v. *Bishop of Bath and Wells*, 2 Dick. 652); but it is different where there are other lands, which may make up the share. *Turner* v. *Morgan*, 11 Ves. 143; and see 1 P. Wms. 447. A partition was decreed between tenants in common of a *waste*, though great inconvenience might ensue, as the want of pasture, shade, &c. *Manton* v. *Squire*, 2 Ch. Cas. 237.

Who may file bill.

An infant tenant in common, or joint-tenant, may file a bill for partition, or such a bill may be filed against him; *Tuckfield* v. *Buller*, Ambl. 197; *S. C.* 1 Dick. 240: and it will be decreed.

A bill for a partition may be sustained on behalf of a joint-tenant of a *lease for years;* nor in such case is the reversioner a necessary party. *Baring* v. *Nash*, 1 Ves. & Bea. 551. And a bill for a partition of *tithes* will lie. *Baxter* v. *Knollys*, 1 Ves. Sen. 495. But the court has no jurisdiction to grant a commission of partition between tenants in common of a *copyhold; Scott* v. *Fawcett*, 1 Dick. 299; the statutes relating to partition not applying to copyholds. See Gilb. Ten. 185; Co. Copy. s. 54, Tracts, 126; Cro. Car. 44; *Burrell* v. *Dodd*, 3 Bos. & Pull. 378; *Oakley* v. *Smith*, 1 Eden, 261. It is the same as to *joint-tenants* of a copyhold, and also as to *co-parceners*. See Hale's MS. n. Co. Litt. 59. a. (1); *vide* 2 Watk. Cop. [194] (*e*): Calthorpe's Reading, 98].

Partition by tenant for life, &c.

The plaintiff's right to a partition is commensurate with his interest.• A tenant for years or for life cannot insist, as against the owners of the other shares, upon a partition to endure beyond his own estate; see *Baring* v. *Nash*, 1 Ves. & Bea. 551; [*Gaskill* v. *Gaskill*, 6 Sim. 643;] but to that extent he may, without the concurrence of the reversioner or reversioners, who cannot be compelled to join him in the suit. If, either upon the determination of the particular estate, or during its continuance, the reversioner, or the owners of the other shares, should wish to compel a partition of the inheritance, another suit must be instituted, and a fresh commission issue. By parity of reasoning, the person intitled to the inheritance in fee in a share is entitled to call for the divided part in fee; and this right will not be affected by the state of the title to the other shares, or the situation of the parties entitled, except so far as these circumstances may create difficulties and delays in obtain-

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ing the completion of the partition by mutual conveyances. Those who are competent will be absolutely bound, and infants will have a day to shew cause after they come of age; and if no cause be shewn, will be decreed to convey. Infants having a day to shew cause, can only assign errors in the proceedings, as in the case of a foreclosure; the partition having been made with reference to the whole interest in the inheritance, at the instance of a person who had a right to demand an immediate permanent partition. The decree directing mutual conveyances extends to parties having no other than equitable interests, which, if the parties were competent, will be bound immediately by the decree; or, if incompetent, on their becoming competent, and failing to shew cause against it. It seems doubtful whether, in regard to such interests, the decree would be considered as equivalent to a transfer of the property, superseding the ordinary method of conveyance; or whether, as an act is directed to be done by the parties, either party would have a perfect title cognizable in a Court of equity, until that direction is complied with. If any of the shares should happen to be subject to contingent remainders to persons not *in esse*, or not ascertained, a supplemental bill must be filed when they shall come *in esse*, or be ascertained, and they will be decreed, if competent, to confirm the partition already made, unless they can shew error in the decree.

Though the right of the party seeking the partition is limited to his interest, yet it is said, that, where A. is tenant for life, with remainder to his children, it is no objection to a bill by A. and his children already born, that the remainder is not absolutely vested, but liable to open and let in future children; for if the objection were valid, a partition could never be made where there is a settled estate, with remainder to persons who may come *in esse*. *Mills* v. *Slade*, 6 Ves. 498. [The point was so decided in *Gaskill* v. *Gaskill*, 6 Sim. 643]. According to this doctrine, the person having the vested inheritance at the time, though liable to be displaced by a springing use or an executory devise, would have a sufficient estate to confer the right to and also to enforce a permanent partition. [Where all or any of the shares are in settlement, the decree directs that the allotments shall be subject to the uses of the settlements. Seton on Decrees, 189. Where one of the tenants in common has made conveyances of particular parts of the property to the amount of his share among different persons, the court will, upon a bill filed for partition of the whole estate, have regard to the particular interests so created. Thus, where A., B., and C. were tenants in common of Whiteacre and Blackacre, and C.

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conveyed his interest in Blackacre to D., and his interest in Whiteacre to E.; upon a bill filed by A. and B. for partition of the whole estate, the court, reversing a decree which had sanctioned a different mode of partition, directed that Blackacre should be divided into three parts, to be conveyed to A., B., and D. respectively; and Whiteacre also into three, to be conveyed to A., B., and E. respectively. *Story* v. *Johnson*, 2 You. & Coll. 586. As to the effect of a feoffment, &c., by one joint-tenant or co-parcener, see *Doe* v. *Taylor*, 2 Nev. & M. 508].

[In partition suits, it is essential that the persons having the legal title should be before the court, to enable the court to decree the proper conveyances. *Miller* v. *Warmington*, 1 Jac. & W. 493. See also *Anon.*, 3 Swanst. 139, n. [And the remark applies to a lessee for years of part. *Corish* v. *Gest*, 2 Cox, 27; *Story* v. *Johnson*, 2 You. & Coll. 586.] But this reason does not apply to a mortgagee of the *entirety*, as he would not be required to execute a conveyance to either party; and, therefore, it is not necessary to make such a person a party to the suit. *Swan* v. *Swan*, 8 Price, 518.

No partition in England for lands in Ireland.

{A bill for a partition of lands in *Ireland* cannot be sustained in England, because the court has no jurisdiction over lands there; and, at common law, no writ of partition lay in England for lands in Ireland. *Cartwright* v. *Pettus*, 2 Ch. Cas. 214; *Carteret* v. *Petty*, Lord Nottingham's MSS.; 2 Swans. 323, *S. C.*}

[As to the commission of partition, and the powers and duties of the commissioners, see Lord *Redesdale's* opinions in *Curzon* v. *Lyster*, Seton on Decrees, 191. Upon this subject, Lord *Brougham*, C., in *Manners* v. *Charlsworth*, 1 Myl. & K. 331, made the following remarks:—"A considerable obscurity hangs over many parts of this subject of commission of partition, both as to the origin of the jurisdiction, after the statute of Hen. 8, and as to the principles which govern its exercise. Lord *Eldon* appears to have felt this obscurity in *Watson* v. *Duke of Northumberland*, 11 Ves. 153. There is no trace of the proceeding, I believe, in this court, before the 40th Elizabeth; and it was of rare and uncertain use, as late as the beginning of the reign of Charles 1. That the mode of proceeding by the commissioners is far from being accurately defined in practice, appears by Lord *Redesdale's* opinions in *Curzon* v. *Lyster*, which Mr. Seton has published in his late work, (Seton on Decrees, 191), and that the practice as to the important matter of their return has, at times, been extremely loose, may be gathered from the fact, that, at least as late as the year 1805, the return was in general made without the evidence annexed contrary

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to the exigency of the commission, in one of its most important particulars. This appears from what passed in the case I have referred to, of *Watson* v. *Duke of Northumberland.* Some things, however, appear to be settled, or at least they are so assumed in the books, and in Lord *Redesdale's* discussion of the subject. The court will be slow to interfere after a partition made, and upon mere evidence of inequality; I can find no instance of interference, where the regularity of the proceedings was not impeached. In one case, indeed, *Turner* v. *Morgan,* (8 Ves. 143; 11 Ves. 457, n.; and also 17 Ves. 546, n.), where a house was to be divided, and the whole chimneys and fire-places, and the only stair-case, were allotted to one of the tenants in common, the exception taken was overruled, the court holding apparently, that the parties must thus be compelled to buy and sell. Again, the commissioners, though they are to act equally between the parties, and are, when named, the commissioners of all, and not of those who choose them, are, nevertheless, chosen by those parties severally; a circumstance which clothes their proceeding with somewhat of the nature of an arbitration, and makes their award less liable to be disturbed than the judgment of persons in whose selection the parties had either none of them interfered, or only one of them. In the present case, three of the five commissioners were, I think, chosen by the objecting parties. It may further be observed, that the commissioners are not bound to pursue the course of examination pointed out by the parties, nor even to put the questions which the parties desire. Lord *Redesdale* holds, that they may frame interrogatories, which they think more proper for obtaining information, and may substitute these for the interrogatories proposed by the parties; and he adds, that, for the discretion which, in other cases, is attributed to counsel, there is, in this case, substituted the discretion vested in the commissioners. Lastly, it may be observed, from the exigency of the commission, and the tenor of the return, how much depends upon the commissioners themselves, and how much the court looks to them in the capacity of witnesses, as well as arbitrators. They are to go, to enter upon, walk over, and survey the estate in question, and, according to the best of their skill, knowledge, and judgment, make a fair partition; not to determine upon inquiry, and according to the evidence, but to see and judge for themselves, by their own skill and knowledge. This is their principal function, or mode of performing their office; but, to aid them in exercising it, they are endowed with a supplementary power of calling for the testimony, including, of course, the opinions, of others. They

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are authorized, for the better making such division, to summon all such witnesses as they shall see occasion for. No court of an ordinary kind has any right whatever to determine what evidence is wanting for its guidance:—that belongs to the parties. Again, if witnesses are called, the commissioners are authorized to examine them upon such interrogatories as they shall see occasion for. They have thus a larger discretion in calling for evidence beyond their own inspection, and in dealing with that evidence, a discretion, it is true, not to be exercised arbitrarily and capriciously, but soundly, yet still a discretion widely different from any possessed by ordinary courts, which are in the hands of the parties, except so far as the rules of evidence interfere. Accordingly, the commissioners are always, the greater part of them, persons of professional skill, surveyors, or land valuers—as in this case, four out of five; and how much store the law sets upon their view may be seen by the care taken with respect to it. Littleton, s. 248, gives the terms of the judgment upon the writ—that partition shall be made between the parties, and that the sheriff, in his proper person, shall go to the lands and tenements, and, by the oath of twelve lawful men, shall make partition; and the statute 8 & 9 Wil. 3, c. 31, for facilitating the proceedings under the writ, provides for the necessary absence of the sheriff, by directing that two justices shall attend, with the under-sheriff."]

[The court will, in order to save expense, direct a commission to a smaller number of commissioners than there are parties interested in the partition; and will order, that, if the parties do not agree in their choice of commissioners, the Master shall choose them of his own authority. *Story* v. *Johnson*, 2 You. & C. 609.]

Different returns by commissioners.

{Under a commission of partition to four commissioners, and two different returns made, one by two of the commissioners, and another by the remaining two, the court cannot act, but will grant another commission directed to *five* commissioners. *Watson* v. *Duke of Northumberland*, 11 Ves. 153; *S. C.*, MS.; and see *Corbett* v. *Davenant*, 2 Bro. C. C. 252. In cases of this kind, the proper mode is to move to quash the return. *Ib.*}

As to improper conduct, or inequality of division by the commissioners.

This is the course, too, where improper conduct is imputed to the commissioners. See *Jones* v. *Totty*, 1 Simons, 136; where exceptions were made to the return on the ground of inequality in value in the respect of allotments; and that management had been used to throw upon the expectant the lot of inferior value; but Sir *J. Leach*, V. C., thought that the charge of management was not made out; and his Honor observed, that, with respect to compara-

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tive value, as the three commissioners were named by the three several parties, and were therefore judges of their own choice, the principles which applied to arbitrators were applicable to them; and, for that reason, he should have hesitated to suppress the return, *even if he had been satisfied that the commissioners had erred in their judgment as to value.*

[A partition which is unequally made, by a clear mistake, will be set aside, and if any of the allotments have been sold, a money compensation will be directed. *Dacre* v. *Gorges*, 2 Sim. & St. 454. In *Story* v. *Johnson*, 1 You. & Coll. 537, the commissioners were directed to divide lands equally between A., B., and C.; they made an equal division, but assigned to A. an inn, which C. had occupied for many years, had improved at considerable expense, and adjoining to which he had purchased property for the purposes of his occupation. A commission was ordered, directed to new commissioners, to be approved of by the Master. Lord *Abinger*, C. B., observed, after referring to *Manners* v. *Charlsworth*, "It is admitted on all sides, that, in a case of partial judgment on the part of the commissioners, there will be ground for the interference of the court; and it is, I think, but feebly contested, that, in a case of very erroneous judgment, leading to a very unjust conclusion, the court will have the same jurisdiction. I see no reason why it should not be so. I see no reason why, when commissioners have made a grievous error in judgment, which would make the whole decree vicious, the court has not the same right to cancel their proceedings, as to interfere with the Master's report."]

Costs.

{With respect to *costs* in cases of partition, it is said to have been determined, that where the plaintiff was entitled to three or four hundred acres, and the defendant to four or five only, and though the defendant would have rather given up his part than be at the expense of a partition; yet it was decreed, and to be at the *equal* expense of both parties. *Parker* v. *Gerard*, Ambl. 237; and so determined by Lord *Thurlow* in *Hyde* v. *Hindly*, 2 Cox, 408. This unreasonable doctrine is not now adhered to, the rule now appearing to be, that in these cases no other costs are given, excepting those of issuing, executing, and confirming the commission, which are borne by the parties, in proportion to the *value* of their respective interests; and no costs are allowed of the previous or subsequent proceedings. *Agar* v. *Fairfax*, 17 Ves. 558; *Calmady* v. *Calmady*, 2 Ves. jun. 568; and see *Metcalf* v. *Beckwith*, 2 P. Wms. 378; *Baring* v. *Nash*, 1 Ves. & Bea. 554; *sed vide* Mitf. Pleading, 98, 3rd ed., 111, 2nd ed. In *Hyde* v. *Hindly*, 2 Cox,

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408, it was held, that where the parties are entitled *unequally*, if the *plaintiff* be entitled to the smaller share, the costs shall be borne equally. This appears perfectly just, as the partition must be presumed to be for his benefit, because it was at his request, and the defendant was forced to submit to it, at a time when perhaps the expense was highly inconvenient.

Commissioners have no lien on commission.

The commissioners have no lien on the commission for their charges, and they cannot insist on payment in the first instance before they return the commission with their certificate. *Young* v. *Sutton*, 2 Ves. and Bea. 366; 1 Madd. Chanc. 250, 2nd ed.

Conveyances necessary on partition in equity.

A partition at *law* was perfected by the delivery of possession, in pursuance of the judgment of the court of law, which concluded all the parties to it without any conveyance whatever being made by them. But partition in *equity* proceeds upon CONVEYANCES *to be* executed by the parties; in which case the same conveyances are necessary to confer a legal title as if the parties had agreed to a private partition; and if the parties be not competent to execute the conveyances, the partition cannot be perfected; *Whalley* v. *Dawson*, 2 Sch. & Lefr. 372; and when any of the parties are *femes covertes*, or tenants in tail, the appropriate legal assurance will be equally necessary; and if the bill be by or against an infant, the *mutual* conveyances are respited until the infant attains twenty-one; *Tuckfield* v. *Buller*, Ambler, 198; 1 Dickens, 240; *S. C.*, Mitford's Pleading, 97, 3rd ed.; 2 Cru. Dig. 541, 2nd ed.; although the infant, whether plaintiff or defendant, be only *cestui que trust*, and the legal estate capable of being conveyed by the trustees. *Lord Brook* v. *Lord and Lady Hertford*, 2 P. Wms. 519; *Attorney General* v. *Hamilton*, 1 Madd. Rep. 214. The decree in these cases can only extend to make the partition, give possession, and order enjoyment accordingly until effectual conveyances can be made.} [Where the defendant in a suit for partition was a person of weak intellect, but not found so by inquisition, the Court directed the commission to issue, and that the lands should be held in severalty, reserving further directions. *Hollingworth* v. *Sidebottom*, 8 Sim. 620.] {So, if a contingent remainder, not capable of being barred or destroyed, be limited to a person not in being, the conveyance must be delayed until such person shall come into being, or until the contingency shall be determined; in either case a supplemental bill would be necessary to carry the decree into execution. An executory devise may occasion a similar embarrassment. Mitf. Plead. 97, 3rd ed.

The usual course is, not for the Court to order who shall be

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parties to the conveyance, but to leave it to the Master to whom it is referred to settle the conveyances. *Attorney-General* v. *Hamilton*, 1 Madd. Rep. 222.} [As to the direction respecting title deeds, see Seton on Decrees, 187.]

Equity will decree an account as well as partition.

The Court of Chancery does not, by analogy to the proceedings at law, confine itself to the object of making the partition, but will also direct an account when prayed. *Lorimer* v. *Lorimer*, 5 Madd. 363. [*Hyde* v. *Hindly*, 2 Cox, 408; *Green* v. *Clear*, 2 Ves. jun. 568; *Turner* v. *Morgan*, 8 Ves. 145; *Story* v. *Johnson*, 2 You. & Coll. 586.] In the case of *Swan* v. *Swan*, 2 Price, 518, the Court referred it to the deputy-remembrancer to take an account of improvements alleged to have been made by the defendant as tenant of the premises sought to be divided, the Court thinking that it ought not to make partition between him and the plaintiff, except upon the terms of those improvements being allowed.

Infancy.

{The interests of *infants* are so far regarded by Courts of equity, in cases of partition, as well as in all other cases, that no decree can be made against an infant, without a day being allowed him to shew cause against the decree after he comes of age; and he is always served with a *subpœna* to shew cause within six months after coming of age, why the decree should not be made absolute; and if he do not appear, the decree is made absolute without entering an appearance. *Wharam* v. *Broughton*, 1 Ves. 183; *Savage* v. *Carol*, 1 Ball & Beatty, 651; 2 Madd. Ch. 460, 2nd ed. Where there is a decree *nisi causâ* against an infant, he may, upon coming of age, and before the decree is made absolute, put in another answer, the answer of his guardian not being binding upon him; *Fountain* v. *Cain and Jeffs*, 1 P. Wms. 503; and he may make a defence, and examine witnesses anew. *Napier* v. *Lady Effingham*, 2 P. Wms. 401. But if an infant conceives himself aggrieved by a decree, he is not under a necessity to wait till he comes of age in order to seek redress, but he may apply for that purpose as soon as he thinks proper; neither is he bound to proceed by way of rehearing, or bill of review, but may impeach the former decree by an original bill. *Richmond* v. *Tayleur*, 1 P. Wms. 734; *Carew* v. *Johnston*, 2 Sch. & Lefr. 292.

An *infant plaintiff* is, it seems, (unless under extraordinary circumstances, see *Bennet* v. *Lee*, 2 Atk. 530), as much bound, and as little privileged, as one of full age; *Lord Brook* v. *Lord Hertford*, 2 P. Wms. 519; *Gregory* v. *Molesworth*, 3 Atk. 626; *Windham* v. *Windham*, 2 Freem. 127; 1 Fonbl. Treat. of Equity, 19, 15th ed.; but the Court will take care that the infant does not make any in-

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jurious submission by his bill, and will, if necessary, when the cause is brought on, allow him to amend his bill, on paying the costs of the day. *Serle* v. *St. Eloy*, 2 P. Wms. 387. There are, however, cases in which an infant has been allowed to shew cause, when he comes of age, against a decree in his own cause, respecting *real* estate; *Lady Effingham* v. *Sir John Napier*, 2 P. Wms. 401, mentioned 3 Atk. 627; but he has been held to be bound by a decree in a cause regarding *personal estate*, wherein he was plaintiff, as much as a person of full age: since it would be most mischievous with regard to personal estate, if an infant, after being of age, should be allowed by a new bill to dispute anything done during his minority, as to *maintenance*, *education*, &c. *Gregory* v. *Molesworth*, 3 Atk. 626; 2 Madd. Ch. 461, 2nd ed.

In cases of partition, if no cause should be shewn after an infant attains twenty-one, or the cause shewn should not be allowed, the decree may be then extended to compel mutual conveyances. Mitf. Plead. 97, 3rd ed.} [It is enacted by the 11 Geo. 4 & 1 Will. 4, c. 47, s. 10, that "where any action, suit, or other proceedings for the payment of debt, *or for any other purpose*, shall be commenced or prosecuted *by or against* any infant, either alone or together with any other person or persons, the parol shall not demur." The effect of the enactment was thought to be, that an infant in a suit for partition would not in future be allowed a day to shew cause: but it has been decided, that, *in all cases in which a conveyance is required from an infnat*, (except where property is sold under the above act), *the practice remains as before*, the day given to the infant in such cases not being founded on the demurrer of the parol. *Price* v. *Carver*, 3 Myl. & Cr. 157. *Vide ante*, p. 415. Cases of partition are expressly exempted from the operation of the stat. 11 Geo. 4 & 1 Will. 4, c. 60. *Vide* sect. 18, *ante*, p. 430.]

4. By private act of parliament.

PARTITION BY ACT OF PARLIAMENT.

Instances in which a private act of Parliament is requisite to effectuate a partition.

{There are so many difficulties attending partition by bill in equity, that, if it be desirable to gain the legal estate immediately, where there are infants interested who would be entitled to shew cause against the partition, at the distance oftentimes of many years; or if the estate be so circumstanced that partition cannot be obtained in equity, as if the parties interested are lunatics; or the surviving trustee of a settlement, with all the requisite powers of completing a partition, or his heir, be a lunatic; or the trustees of an estate in strict settlement have no power by the settlement to

PARTITION BY ACT OF PARLIAMENT.

make partition, and the parties interested are infants, or only tenants for life, with contingent remainders to persons not ascertained, or not in being; or the trustees have a power to make partition, but have no authority how to apply the money *received* for equality of partition, or how to raise the money to be *paid* for equality of partition; or if there be a power to make partition, with a power to raise the money to be paid for equality of partition, by sale or mortgage of part of the lands in settlement, and the money could be raised with greater ease and benefit to the parties immediately interested, and the remainder-men, by sale of timber, but the tenant for life in possession is restricted from cutting more than a certain quantity annually, or the tenant for life in such a case is subject to impeachment for waste; and in many other instances, as various as the necessities of families, and of which our intricate system of settlements prevents the accomplishment; and in many other cases in which courts of equity find they have no power to make a partition, unless clogged with such numerous impediments and inconveniences that the parties would not be desirous of obtaining it: —then the only effectual way of proceeding is by a bill in Parliament, which has been for many years a common mode of proceeding to accomplish a partition of estates.

No conveyance necessary.

The private act operates as a conveyance, and transfers an immediate legal estate to the trustees appointed to make the partition, or immediately to the parties themselves, if the property which each is to take has been previously fixed, without any conveyance from the parties. And infants and other persons under disabilities are by it irrevocably bound.}

STAMPS ON PARTITION DEEDS.

DUTIES PAYABLE ON PARTITIONS BY 55 GEO. III. c. 184.

SCHEDULE, PART I.

	£	s.	d.
Any deed, whereby any lands or other hereditaments, or heritable subjects, in England or Scotland, shall be conveyed, or any copyhold or customary lands or hereditaments, in England, shall be covenanted to be surrendered, in order to effect a partition or division thereof, among co-parceners, joint-tenants, or tenants in common, heirs-portioners, conjux-fiars, or joint-proprietors of any sort—			
If no sum of money, or only a sum under £300 shall be paid, or agreed to be paid, for equality of partition or division, the ordinary duty of -	1	15	0
And if any sum or sums of money, amounting to £300 or upwards, shall be paid, or agreed to be paid, for equality — *The same* ad valorem *duty as for a conveyance on sale of lands, for a sum of money equal to the amount of the sum or sums so paid or agreed to be paid.*			
And where any such deed of partition or division, together with any schedule, receipt, or other matter, put or indorsed thereon, or annexed thereto, shall contain 2,160 words, or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further progressive duty of—			
If the deed be liable, in the first instance, to a duty of 1*l.* 15*s.* - - - - - - - - -	1	5	0
Or if liable to a higher duty in the first instance -	1	0	0
And any duplicate of any such deed of partition or division shall be charged with the same duty or duties.			
And in case there shall be no more than one deed for completing the title to the estate or interest conveyed by either party, the principal deed only shall be charged under this head of partition; and any subordinate or collateral deed shall be charged with the duty to which it may be liable under any other description in this schedule.			

PARTITION.

PRECEDENTS.

1. BETWEEN TWO CO-HEIRESSES.

1. DEED *of* PARTITION *of* FREEHOLD MESSUAGES *between* TWO CO-HEIRESSES. (*A short Form*).

THIS INDENTURE, made the —— day of ——, 18—,

Parties.

BETWEEN [A. B.], of &c., of the first part: [C. D.], of &c., of the second part; and [*releasee to uses*], of &c., of the third part:

Recital of parties being entitled in co-parcenary,

WHEREAS the said [A. B.] and [C. D.], as the only children and co-heiresses-at-law of [A. Z.], late of &c., deceased, are seised of or entitled unto the messuages and hereditaments hereinafter mentioned for an estate of inheritance in fee-simple in possession, free from all incumbrances, in co-parcenary:

—of agreement to make partition,

AND WHEREAS the said [A. B.] and [C.D.] are desirous of making a partition of the messuages and hereditaments so held by them as aforesaid; and they have agreed that the messuage numbered ——, in —— place, in the city of ——, shall be taken and enjoyed by the said [A. B.] in severalty, in lieu of her undivided share of the entirety of the said messuages and tenements; and that the several messuages numbered —— and ——, in —— street, in the said city, shall be taken and enjoyed by the said [C. D.] in severalty, in lieu of her undivided share of the entirety of the said hereditaments;

—of the intention to convey.

AND WHEREAS the said [A. B.] and [C. D.] are desirous that the hereditaments so to be allotted to them respectively should be conveyed and assured in the manner hereinafter mentioned.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, and also in consideration of the sum of 10*s.* of &c., paid by the said [*releasee to uses*] to the said [A. B.] and [C. D]. at or

Co-parceners, according to their respective shares, release.

1. BETWEEN TWO CO-HEIRESSES.

immediately before the execution of these presents, the receipt, &c., they the said [A. B.] and [C. D.], according to their respective shares and interests in the premises, *Do*, and each of them *Doth* by these presents, grant, bargain, sell, and release unto the said [*releasee to uses*], and to his heirs (in the actual possession, &c.); 1st. *All that* messuage or dwelling-house, situate in —— place, in the city of ——, aforesaid, now in the tenure or occupation of [*tenant*]; 2ndly. ALL THOSE two several messuages or dwelling-houses, situate and being Nos. —— and ——, in —— street, in the city of ——, aforesaid, now in the several tenures or occupations of [*tenants*], together with all and singular the rights, members, and appurtenances to the said premises respectively belonging, or in anywise appertaining; And the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; *And all* the estate, right, title, interest, property, possession, benefit, claim, and demand whatsoever of them the said [A. B.] and [C. D.] respectively, in or to the said messuages or dwelling-houses and premises, or any part thereof; To HAVE AND TO HOLD all and singular the messuages or dwelling-houses hereinbefore described, and all other the premises hereby released, or intended so to be, with their appurtenances, unto the said [*releasee to uses*] and his heirs for ever, to the uses following, (that is to say; As to, for, and concerning the messuage or dwelling-house, being No. ——, in —— place aforesaid, firstly hereinbefore described, To THE USE of the said [A. B.], her heirs, and assigns, for ever; And as to, for, and concerning the messuages or dwelling-houses, being Nos. —— and ——, in —— street, aforesaid, severally hereinbefore described, To THE USE of the said [C. D.], her heirs and assigns for ever; And to or for no other use, intent, or purpose whatsoever. And the said [A. B.], so far as respects one undivided moiety or equal half-part of the messuages or dwelling-houses, hereditaments, and premises hereby released, or intended so to be, and so far as respects the acts, deeds, and defaults of herself, the said [A. B.], and of the said [A. Z.], deceased, respectively, and those claiming under them respectively; and the said [C. D.], so far as respects the other undivided moiety or equal half-part of the said hereditaments, and so far as respects the acts, deeds, and defaults of her the said [C. D.], and of the said [A. Z.], deceased, respectively, and those claiming under them respectively, for themselves, the

Parcels.

And all the estate, &c.

Habendum,

Unto releasee to uses.

As to one messuage, to the use of [A. B.] in fee;

And as to the other messuage, to the use of [C. D.] in fee.

Covenants for title by the respective parties, each covenanting for a moiety.

1. BETWEEN TWO CO-HEIRESSES.

said [A. B.] and [C. D.] respectively, and their respective heirs, executors, and administrators, do hereby severally covenant and agree with the said [*releasee to uses*], and his heirs, that, notwithstanding any act, deed, matter, or thing whatsoever, made or done, or permitted to be made or done by the said [A. B.] and [C. D.] respectively, or by the said [A. Z.], their late father, deceased, to the contrary, the said [A. B.] and [C. D.], respectively, are now seised to them and their heirs, of a clear, rightful, and absolute estate of inheritance in fee simple in possession in the messuages or dwelling-houses, hereditaments, and premises hereby released, or intended so to be; and that, notwithstanding any such act, deed, matter, or thing as aforesaid, the said [A. B.] and [C. D.] respectively have in themselves good right and absolute authority by these presents to release or otherwise assure the said hereditaments, with their appurtenances, unto the said [*releasee to uses*], and his heirs, for ever, to the uses and in manner aforesaid, according to the true intent and meaning of these presents; *And also*, that the messuages or dwelling-houses, hereditaments, and premises hereby released, or intended so to be, shall, from time to time, and at all times hereafter, remain to the several uses hereinbefore declared concerning the same, and shall be peaceably and quietly held and enjoyed accordingly, without any eviction, interruption, or denial whatsoever, from or by the said [A. B.] and [C. D.] respectively, or their respective heirs, or any person or persons claiming from, through, under, or in trust for them respectively, or from, through, under, or in trust for the said [A. Z.], deceased; *All that*, free and clear, or freely, clearly, and absolutely discharged, or by the said [A. B.] and [C. D.] respectively, or their respective heirs, executors, or administrators, effectually kept indemnified from or against all former and other estates, rights, titles, charges, and incumbrances whatsoever, made, created, or occasioned by the said [A. B.] and [C. D.] respectively, or any person or persons claiming from, through, under, or in trust for them respectively, or from, through, under, or in trust for the said [A. Z.], deceased, or by or through their or any of their acts, default, privity, consent, or procurement; *And further*, that the said [A. B.] and [C. D.] respectively, and their respective heirs, and every person whosoever rightfully claiming from, through, under, or in trust for them respectively, or from, through, under, or in trust for the said [A. Z.]

That they are seised in fee;

And have right to convey;

That premises shall remain to the uses before declared,

Free from incumbrances;

And for further assurance.

1. BETWEEN TWO CO-HEIRESSES.

deceased, will, from time to time, and at all times hereafter, on the request and at the costs and charges of the said [C. D.] and [A. B.] respectively, or their respective heirs or assigns, make, do, acknowledge, execute, and perfect every such lawful act, deed, conveyance, or assurance in the law whatsoever, for more effectually releasing or otherwise assuring the messuages or dwelling-houses, hereditaments, and premises hereby released, or intended so to be, unto the said [*releasee to uses*] and his heirs, to the use of them the said [C. D.] and [A. B.] respectively, and their respective heirs and assigns, or otherwise as they respectively shall direct, as by the said [C. D.] and [A. B.] respectively, or their respective heirs or assigns, or their respective counsel in the law, shall be reasonably required, so as such further assurances shall not contain in them, nor imply. any further or more general covenant or warranty than against the acts, deeds, and defaults of the person or persons who shall be required to make or execute the same, and so as the person or persons who shall be required to make or execute such further assurances, shall not for that purpose be compellable to go from his, her, or their usual place or places of abode. AND it is hereby declared and agreed, by and between the said parties to these presents, that the implied mutual warranty and right of re-entry (*a*), incident to a partition at common law, shall not attach or belong to the partition hereby made; and that such partition shall not be in anywise avoided, defeated, or disturbed in consequence of the eviction, by title paramount or otherwise, of either of the parties hereto, or any person or persons claiming under them or either of them respectively, from the hereditaments and premises hereby released to such party respectively; nor shall the title of either of the said parties, or of any person or persons claiming under her, to the hereditaments and premises hereby released to such party, depend upon the title of the other of the said parties, or her heirs, to the hereditaments and premises hereby released to such other of the same parties respectively. IN WITNESS &c.

Declaration negativing implied mutual warranty.

(*a*) *Vide ante*, p. 574.

2. OF LEASEHOLDS BETWEEN TWO.

2. DEED *of* ASSIGNMENT *in the Nature of a Partition, by* TWO TENANTS *in* COMMON *mutually* ASSIGNING *their respective Shares in* LEASEHOLD PROPERTY (*a*).

Parties.

Recital of leases.

Agreement for mutual assignment.

And for payment of a sum of money.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [A. B.], of &c., of the one part; and [C. D.], of &c., of the other part: WHEREAS (*recite two leases, respectively comprising the several messuages afterwards described, granted to* [R. S.]; *also the will of* [R. S.], *bequeathing all his personal estate to* [A. B.] *and* [C. D.], *as tenants in common, and appointing them executors; and the death of the testator, and the grant of probate of his will, in the usual manner*); AND WHEREAS it hath been mutually agreed by and between the said [A. B.] and [C. D.], that the undivided moiety or half part of the said [A. B.], of and in the messuage and premises comprised in the firstly hereinbefore-recited indenture of lease, shall be assigned to the said [C. D.]; and that, in consideration thereof, the undivided moiety or half part of the said [C. D.], of and in the messuage and premises comprised in the lastly hereinbefore-recited indenture of lease, shall be assigned to the said [A. B.]; and, inasmuch as the value of the messuage to be allotted in severalty to the said [C. D.] exceeds the

Remarks upon the partition of leaseholds.

(*a*) Where a partition is to be made of leasehold property, it is effected either by procuring all the part owners to concur in assigning the entirety to a third person, upon trust to assign to the several parties their respective allotments, or each joint-owner assigns to the others his undivided share in the parts to be taken in severalty by them. The advantage of the latter mode is, that the partition is effected by a single deed, and therefore it has been adopted in the present instance. If the property is vested in a trustee, of course a separate assignment must be taken from him.

It may be observed, that, if the portions of a leasehold estate allotted to several parties be comprised in one lease, an apportionment of the reserved rent would be requisite; and it would be proper to give cross-powers of distress to the respective parties; for which see a precedent, *infra*, p. 658. The lease also, in such case, should be deposited with a third person for the mutual benefit of the parties, or delivered to one of them, he covenanting to produce it to the other or others.

value of the messuage to be allotted to the said [A. B.], it has been agreed that the said [C. D.] shall pay to the said [A. B.] the sum of £——, as an equivalent for such excess, so far as respects the moiety of the said [A. B.] NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the assignment hereinafter contained, and also in consideration of the sum of £—— of &c., paid by the said [C. D.] to the said [A. B.], at or immediately before the execution of these presents, the receipt whereof the said [A. B.] doth hereby acknowledge, and from the same doth release and discharge the said [C. D.], his executors, administrators, and assigns, by these presents, he the said [A. B.] *Doth*, by these presents, grant, bargain, sell, assign, and transfer unto the said [C. D.], his executors, administrators, and assigns, ALL THAT the undivided moiety or equal half part of him the said [A. B.], of and in all and singular the messuage or tenement and premises comprised in and demised by the firstly hereinbefore-recited indenture of lease, bearing date on or about the —— day of ——, together with the rights, members, and appurtenances to the same premises belonging, and also of and in the said indenture of lease, and the benefit thereof. And all the estate, right, title, interest, term and terms for years, benefit, claim, and demand whatsoever, of him the said [A. B.] in and to the said leasehold premises; TO HAVE AND TO HOLD the said moiety, half part or share, or other the premises hereinbefore assigned, or intended so to be, unto the said [C. D.], his executors, administrators, and assigns, henceforth during all the residue and remainder now to come or unexpired of the term of —— years, granted by the firstly hereinbefore-recited indenture of lease, and for all other the estate, term, and interest (if any) of the said [A. B.], of and in the said premises; subject, nevertheless, to the payment of the rent, and to the performance and observance of all and singular the covenants, conditions, and agreements, respectively reserved and contained by and in the last-mentioned indenture of lease, on the lessee's part henceforth to be paid, observed, and performed, so far as the same relate to or concern the undivided moiety or half part hereinbefore assigned, or intended so to be. (*Add covenants for title by* [A. B.] *with* [C. D.], *as to the moiety assigned by him*). AND THIS INDENTURE ALSO WITNESSETH, that, in further

2. OF LEASEHOLDS BETWEEN TWO.

Testatum:

In consideration of assignment after contained, and of a sum of money, [A. B.] assigns to [C. D.],

The moiety of [A. B.] in premises comprised in first lease,

And all the estate, &c.

Habendum.

Subject to rent, &c.

Further *testatum:*

2. OF LEASEHOLDS BETWEEN TWO.

pursuance of the above-recited agreement, and in consideration of the assignment hereinbefore contained, (*and for a nominal pecuniary consideration*), the said [C. D.] *Doth*, by these presents, bargain, sell, assign, and transfer unto the said [A. B.], his executors, administrators, and assigns, ALL THAT undivided moiety or equal half part of him the said [C. D.], of and in all and singular the messuage or tenement and premises comprised in and demised by the secondly hereinbefore-recited indenture of lease, bearing date on or about the —— day of ——, together with the rights, members, and appurtenances to the same premises belonging, and also of and in the last-mentioned indenture of lease, and the benefit thereof; And all the estate, &c.; To HAVE AND TO HOLD the said moiety, half part or share, or other the premises lastly hereby assigned, or intended so to be, unto the said [A. B.], his executors, administrators, and assigns, henceforth, during all the residue and remainder now to come or unexpired of the term of —— years, granted by the lastly hereinbefore-recited indenture of lease, of the —— day of ——, and for all other the estate, term, and interest (if any) of him the said [C. D.] therein, subject, nevertheless, to the payment of the rent, and to the performance and observance of the several covenants, conditions, and agreements, respectively reserved and contained by and in the last-mentioned indenture of lease, so far as the same relate to or concern the undivided moiety or equal half part lastly hereby assigned as aforesaid. (*Add covenants for title by* [C. D.] *with* [A. B.] *Also, mutual covenants by* [A. B.] *and* [C. D.] *to pay the rents and perform the covenants of their respective leases, and indemnify each other, and also the testator's estate, therefrom. Also, if so intended, clause negativing implied warranty*). IN WITNESS &c.

In consideration of assignment before contained, [C. D.] assigns to [A. B.] his moiety in premises comprised in second lease.

Habendum,

Subject to rents, &c.

3. DEED *of* PARTITION *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS *between three* TENANTS *in* COMMON.

3. FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, BETWEEN [A.], of &c., of the first part; [B.], of &c., of the second part; and [C.], of &c., of the third part; [*releasee to uses*], of &c., of the fourth part; [*A.'s dower trustee*], of &c., of the fifth part; and [*B.'s dower trustee*], of &c., of the sixth part: (*recite the will of testator, whereby he devised all his freehold, copyhold, and leasehold estates unto* [A.], [B.], *and* [C.], *his three children, as tenants in common, and appointed them executors and executrix; the death of testator, and probate of his will; also the admission of the devisees to the copyholds*): AND WHEREAS the said [A.], [B.], and [C.] have agreed to make a partition of the several freehold, copyhold, and leasehold hereditaments, respectively devised and bequeathed to them as aforesaid, and that the several divided parts thereof shall be enjoyed by them respectively in severalty; and it hath been agreed between the said parties that the several freehold messuages, lands, and hereditaments comprised in the first schedule to these presents shall be allotted to and taken by the said [A.]; that the several freehold and copyhold lands and hereditaments comprised in the second schedule to these presents shall be allotted to and taken by the said [B.]; and that the several freehold and leasehold messuages, lands, and hereditaments comprised in the third schedule to these presents shall be allotted to and taken by the said [C.], in lieu of the respective undivided shares of the said [A.], [B.], and [C.], in the said several freehold, leasehold, and copyhold hereditaments so devised and bequeathed to them as aforesaid. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for effectuating the said intended partition, and in consideration of the premises, and also in consideration of the sum of 10*s.* of &c., paid by the said [*releasee to uses*] to each of them the said [A.], [B.], and [C.], at or before the execution of these presents, the several receipts whereof are hereby acknowledged, they the said [A.],

Parties.

Recital of testator's will, &c.

—of agreement to make partition.

Testatum:

Release of freeholds.

3. FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

[B.], and [C.], according to their respective undivided shares and interests in the premises, *Do*, and each and every of them *Doth* by these presents, grant, bargain, sell, and release unto the said [*releasee to uses*], and his heirs (in the actual possession, &c.), *All and singular* the several freehold messuages, lands, and hereditaments respectively comprised in the first, second, and third schedules to these presents, or which are delineated in the map or plan indorsed on these presents; Together with all ways, &c.; And the reversion, &c.; And all the estate, &c.; To HAVE AND TO HOLD all and singular the messuages, lands, and hereditaments hereinbefore described, and all other the premises hereby released, or intended so to be, unto the said [*releasee to uses*] and his heirs, for ever, to the uses, upon the trusts, and for the intents and purposes hereinafter expressed and declared concerning the same, (that is to say); AS TO, FOR, AND CONCERNING the freehold messuages, lands, and hereditaments comprised in the first schedule to these presents, and which in the map or plan indorsed on these presents are marked with a red colour; (*to uses to prevent dower in favour of* [A.], *and declaration negativing his widow's title to dower*). AND AS TO, FOR, AND CONCERNING the several freehold lands and hereditaments comprised in the second schedule to these presents, and marked with a green colour in the map or plan hereon indorsed, (*to uses to prevent dower in favour of* [B.], *and declaration negativing widow's title to dower*). AND AS TO, FOR, AND CONCERNING the several freehold lands and hereditaments comprised in the third schedule to these presents, and marked with a yellow colour in the map or plan hereon indorsed, TO THE USE of the said [C.], her heirs and assigns for ever (*a*). AND THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of the above-recited agreement in this behalf, and for effectuating the said intended partition, and in consideration of the premises, they the said [A.] and [C.] for themselves respectively, and for their respective heirs, exe-

Parcels.

Habendum.

Uses in favour of the respective parties.

Further *testatum.*

Covenant to surrender copyholds.

(*a*) Where any party to a deed of partition wishes to subject his or her allotment to special limitations, it is, in general, better to effect this by a separate deed than to introduce the limitations into the partition deed: for instance, suppose that, in the present case, C. were about to marry, and wished to settle the lands allotted to her upon the objects of the marriage, it would be advisable that the lands should be limited to her simply in fee, as in the text, and she should convey them to the intended limitations by a subsequent deed.

Suggestion where any party wishes to settle his allotment.

cutors, and administrators, but each of them as to and concerning one undivided third part of the copyhold hereditaments hereinafter mentioned, and his and her own acts, deeds, and defaults only, do hereby covenant and agree with the said [B.], his heirs and assigns, that the said [A.] and [C.] respectively, or their respective heirs, shall and will, at the joint and equal costs and expense of the said [A.], [B.], and [C.], their heirs, executors, or administrators, at the next court baron to be holden for the said manor of ——, or out of court, so soon as conveniently may be, at the option of the said [B.], his heirs or assigns, either in person or by attorney, well and effectually surrender (*b*) into the hands of the lord or lords, lady or ladies, of the said manor, *All and singular* the copyhold lands and hereditaments comprised in the second schedule to these presents, together with all ways, paths, passages, easements, profits, privileges, rights, members, and appurtenances to the said hereditaments belonging or appertaining; and also all the estate, right, title, interest, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of them the said [A.] and [C.] respectively, in or to the said copyhold lands and hereditaments, *To the use* of the said [B.], his heirs or assigns, for ever, *To the intent* that the said [B.], his heirs or assigns, may be admitted tenant or tenants of the said copyhold premises: *To hold* the same at the will of the lord or lords, lady or ladies, of the said manor, according to the custom of the said manor, and at and by the rents, suits, and services therefore due and of right accustomed; And also, that they the said [A.] and [C.] respectively, or their respective heirs, executors, or administrators, shall and will pay and bear two equal third parts of the fine and other expenses attending the admittance of the said [B.] his heirs or assigns, to the said copyhold premises.

3. FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

AND THIS INDENTURE LASTLY WITNESSETH, that, in further pursuance of the above-recited agreement in this behalf, and for effectuating the said intended partition, and in consideration of the premises, and also in consideration of the sum of 10*s.* of &c., paid by the said [C.] to each of them the said [A.] and [B.] at or before the execution of these presents, the several receipts whereof are hereby acknowledged, they the said [A.] and [B.], according to their

Further *testatum*:

Assignment of shares of [A.] and [B.] in leaseholds.

(*b*) If the partitioners had been joint-tenants or coparceners, a release would have been sufficient.

3. FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

respective shares and interests, *Do*, and each of them *Doth* by these presents grant, bargain, sell, and assign unto the said [C.] her executors, administrators, and assigns, *All those* the said two several undivided third parts or shares of the said [A.] and [B.] respectively, of and in all and singular the leasehold messuages, lands, and hereditaments comprised in the third schedule to these presents, together with all and singular the rights, members, and appurtenances to the said leasehold premises belonging, or in anywise appertaining, and of and in the several indentures of lease by which the same premises are respectively held, and the benefit thereof respectively; And all the estate, right, title, interest, term and terms of years, now to come and unexpired, right and benefit of renewal, claim, and demand whatsoever, both at law and in equity, of them the said [A.] and [B.] respectively, in or to the said leasehold premises;

Habendum.

To HAVE AND TO HOLD the said two undivided third parts or shares, and other the premises hereby assigned, or intended so to be, unto the said [C.], her executors, administrators, and assigns, henceforth during all the respective residues and remainders now to come and unexpired of and in the several terms, estates, and interests respectively granted by the several indentures of lease mentioned or referred to in the said third schedule to these presents; subject, nevertheless, to the payment, performance, and observance of the several rents, covenants, conditions, and agreements respectively reserved and contained by and in the said several indentures of lease respectively, and which, on the part of the lessees respectively, are or ought henceforth to be paid, observed, and performed, so far as respects the two undivided third parts hereby assigned of the said leasehold premises respectively.

Covenants.

(*Add covenants for title as to the freehold premises by* [A.], [B.], *and* [C.], *according to their respective shares, with the releasee to uses and his heirs; as to the copyholds by* [A.] *and* [C.], *according to their respective shares, with* [B.], *his heirs and assigns; and as to the leaseholds, by* [A.] *and* [B.], *according to their respective shares, with* [C.], *her executors, administrators, and assigns. Also, covenant by* [C.] *with* [A.] *and* [B.] *severally, their executors and administrators, to pay the rents and perform the covenants in the several leases, and indemnify them, and the executors or administrators for the time being of the testator, therefrom. Also, if so intended, clause negativing implied mutual warranty*).

IN WITNESS &c.

3. FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

FIRST SCHEDULE REFERRED TO IN THE WITHIN WRITTEN INDENTURE.

	Name of Close.	*Quality of Land.*	*Contents.*	*Occupiers.*
			a. r. p.	
Freehold.	Whiteacre.	Arable.	5 2 17	John Brown.
	Blackacre.	Pasture.	9 1 24	Edward Robinson.

SECOND SCHEDULE REFERRED TO IN THE WITHIN-WRITTEN INDENTURE.

THIRD SCHEDULE REFERRED TO IN THE WITHIN-WRITTEN INDENTURE.

4. UNDER DECREE IN CHANCERY.

4. RELEASE *in Fee, executed in pursuance of a* DECREE *of the* COURT *of* CHANCERY *for* EFFECTING *a* PARTITION *between the absolute* OWNER *of* FIVE UNDIVIDED SIXTH PARTS, *and the Parties interested under a* MARRIAGE SETTLEMENT *in the* REMAINING SIXTH, *a* SUM *of* MONEY *being paid for* EQUALITY *of* PARTITION.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN (P.), of &c., of the first part; (A.) of &c., of the second part; [W.], of &c., and [B.], his wife, of the third part; [L.] and [M.], of &c., of the fourth part; [G.], of &c., and [H.], of &c., of the fifth part; [*releasee to uses*], of &c., of the sixth part; and [*A.'s dower trustee*], of &c., of the seventh part: WHEREAS, by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, the release made between [R.] of the first part; [S.] of the second part; and [O.], of &c., and the said [P.], of the third part, (being the settlement executed

Parties.

Recital of marriage settlement of the entirety;

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previously to the marriage of the said [R.] and [S.], the father and mother of the said [A.] and [B.]); *All and singular* the freehold messuages, farms, lands, and hereditaments hereby released, or intended so to be, were conveyed and assured unto and to the use of the said [O.] and [P.], their heirs and assigns, in trust for the said [R.] and [S.] successively, during their respective lives, and, after their respective deceases, in trust for all and every the child and children of the said [R.] and [S.] lawfully begotten, his, her, and their heirs and assigns, for ever, if more than one, as tenants in common: AND WHEREAS there were issue of the said marriage six children, namely, the said [A.] and [B.], and four children [C.], [D.], [E.], and [F.], who died in their infancy; AND WHEREAS the four respective undivided sixth parts or shares of the said [C.], [D.], [E.], and [F.], of and in the hereditaments so settled and assured by the hereinbefore-recited indentures, descended, at their respective deceases, to the said [A.], as their eldest brother and heir-at-law; AND WHEREAS the said [R.] and [S.] have severally departed this life; AND WHEREAS, by indentures of lease and release or settlement, bearing date respectively on or about the —— and —— days of ——, the release being made between the said [W.] of the first part; the said [B.], of the second part; and the said [G.] and [H.], of the third part, (being the settlement executed previously to the marriage of the said [W.] and [B.]), *All that* the one undivided sixth part or share of her the said [B.] of and in all and singular the messuages, farms, lands, and hereditaments comprised in the hereinbefore-recited indentures, and hereinafter described, and hereby released, or intended so to be, was conveyed and assured unto and to the use of the said [G.] and [H.], their heirs and assigns, for ever, in trust for the said [B.] during her life for her separate use, and, after her decease, in trust for all and every the sons and son of the said [W.] and [B.], lawfully to be begotten, their or his heirs and assigns, for ever, if more than one, as tenants in common, and not as joint-tenants: AND WHEREAS the said [L.] and [M.] are the only sons of the said last-mentioned marriage, and they have severally attained the age of twenty-one years (*a*); AND WHEREAS the said [O.] has departed this life, leaving

—as to issue of the marriage.

—of the death of four of the children, whose shares descended to [A.]

—of death of [R.] and [S.]

—of settlement affecting the undivided share of one of the parties.

—issue of the last-mentioned marriage.

—death of trustee.

(*a*) [The conveyance is not executed by any party until the infants have attained their majority, *vide ante*, p. 609.]

the said [P.], his co-trustee, him surviving: AND WHEREAS the said [A.], on or about the —— day of ——, filed a bill in the High Court of Chancery against the said [W.] and [B.], the said [L.] and [M.], (who were then infants under the age of twenty-one years), and the said [P.], praying, amongst other things, that a partition and division might be made of the said messuages, farms, lands, and hereditaments, between him the said [A.] and the said defendants, according to their respective shares and interests therein, and that a commission might issue for that purpose, with the usual directions: and that the parts and shares of the said messuages, farms, lands, and hereditaments, which should be allotted to the said plaintiff and defendants under the said commission, might be enjoyed by them in severalty, and that proper conveyances thereof might be executed: AND WHEREAS the said defendants severally appeared and put in their answers to the said bill: AND WHEREAS, by an order of the said Court of Chancery in the said cause, bearing date the —— day of ——, made by the Right Honourable the Master of the Rolls, his Lordship did order and direct that it should be referred to Mr. ——, one of the Masters of the said court, to inquire and state to the court what undivided shares the plaintiff and defendants were entitled to in the premises in the pleadings mentioned, and for what estates and interests respectively; for the better discovery whereof the said parties were to be examined upon interrogatories upon oath, as the said Master should direct; and it was ordered, that a partition should be made of the said messuages, farms, lands, and hereditaments, among the said plaintiff and such of the said defendants, as, by the Master's report, should appear to be entitled to any undivided shares; and that a commission or commissions should issue for that purpose, directed to certain commissioners to be therein named: and it was ordered that all deeds, papers, and writings in the possession or power of the parties relating to the said messuages, farms, lands, and hereditaments, should be produced upon oath before the said Master, and before the commissioners to be named in the said commission of partition, with liberty for the said commissioners to examine witnesses, such witnesses being first duly sworn, and to take their depositions in writing if they should think fit, and to return the same with the said commission: and it was ordered, that what should be allotted to the several parties should be

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—bill in Chancery for partition.

Appearance and answer,

—of decree for partition.

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holden and enjoyed by them in severalty, and that, if any of the parties were under any disability, and not capable of executing conveyances, they, when they were capable of making or joining in a conveyance of the parts of the said messuages, farms, lands, and hereditaments to be allotted to the several parties aforesaid, and all other proper parties, were to join in executing proper conveyances and assurances for conveying and vesting the several divided shares of the said messuages, farms, lands, and hereditaments to and in the said parties respectively, according to their several rights and interests in and to their several undivided parts and shares of and in the said messuages, farms, lands, and hereditaments, such several conveyances, deeds, and instruments to be settled by the said Master; and the said decree was to be binding upon the said defendants [L.] and [M.], the infants, unless they, on being served with a subpœna to shew cause against the same, should, within six months after they should respectively attain their several ages of twenty-one years, shew unto the said court good cause to the contrary; and, in the meantime, the several other parties were to hold and enjoy their respective shares so to be allotted to them as against the said infants; AND WHEREAS the said Master, by his report, bearing date the —— day of ——, found that the said plaintiff was entitled to five undivided sixth parts or shares in fee-simple in the said hereditaments; and that the said defendant [B.] was entitled for her life to the remaining undivided sixth part; and that the said defendants, [L.] and [M.], were entitled to the remainder in fee-simple in the said undivided sixth part expectant on the decease of the said [B.]: AND WHEREAS, in pursuance of the above-recited order of the said Court of Chancery, a commission of partition was issued, bearing date the —— day of ——, directed to [*three commissioners*], authorizing the said commissioners, or any two of them, to meet together and to enter into and upon the said messuages, farms, lands, and hereditaments in question, and to separate, divide, and allot the same into five-sixth and one-sixth parts or shares, and to allot five-sixth parts thereof as the share of the said plaintiff, and the remaining sixth part thereof as the share of the said defendant [B.], for her life; and they were to certify and return to the said court their proceedings in the premises: AND WHEREAS the said [*acting commissioners*], two of the said commissioners, did, by their

Master's report.

Issuing of commission.

Commissioners' certificate of partition.

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certificate, bearing date the —— day of ——, certify to the said Court of Chancery, that, in execution of the said commission, they had proceeded to value, separate, and set apart the said messuages, farms, lands, and hereditaments in two divisions, (that is to say); All that, &c. (*describe parcels allotted to* [A.]), they the said commissioners had separated, set out, allotted, and divided, and did thereby separate, set out, allot, and divide, unto and for the said [A.], the plaintiff, in severalty, as and for his part or share of the hereditaments in the pleadings of the said cause mentioned; And, as to *all that* (*describe parcels allotted to* [B.]), the said commissioners did separate, set out, allot, and divide the last-mentioned hereditaments unto and for the said defendant [B.] for her life. And for the more exact and perfect equality of division between the said respective parties, the said commissioners did adjudge and direct, that the said [B.] should pay, or cause to be paid, to the said [A.], the sum of £——; and they moreover certified, that they had delineated the said lands in a certain plan or schedule to the certificate annexed, wherein the lands allotted to the said [A.] were marked with a red colour, and the lands allotted to the said defendants were marked with a green colour; AND WHEREAS the said partition had been duly confirmed by an order of the said Court of Chancery, bearing date the —— day of —— last past; AND WHEREAS the said plaintiff [A.], and the said defendants [W.] and [B.], [L.], [M.], and [P.], are willing and desirous to complete and perfect the said partition, and carry the same into effect; And the said [A.] is desirous that such parts of the said hereditaments as have been allotted to him as aforesaid, shall be limited and assured to the uses and upon the trusts hereinafter declared concerning the same; And the said defendants are desirous that the hereditaments allotted to them as aforesaid shall be limited and assured to the same uses, upon the same trusts, for the same intents and purposes, and subject to the same powers, provisoes, and declarations, as the undivided sixth part or share of the said defendants of and in the hereditaments comprised in the hereinbefore-recited indentures of the —— and —— days of —— (*b*), was and stood immediately before the execution of these presents,

Order of court confirming partition.

Desire of parties to complete partition.

(*b*) Settlement on the marriage of [R.] and [S.]

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limited and subject to under or by virtue of the hereinbefore-recited indentures of the —— and —— days of —— (*c*): AND WHEREAS the said Master hath perused, settled, and approved of these presents, and in testimony thereof hath written his name and allowance in the margin of the last skin of these presents, and his name in the other skins thereof. NOW THIS INDENTURE WITNESSETH, that, in pursuance of, and in obedience to, the hereinbefore-recited order of the Court of Chancery, and for perfecting the said partition, and to the intent that the several hereditaments allotted by the hereinbefore-recited certificate of partition may be for ever held and enjoyed in severalty, according to the uses thereof hereinafter declared; and also in consideration of the sum of £——, of &c., paid by the said [B.] to the said [A.], at or immediately before the execution of these presents, for equality of partition, pursuant to the direction in that behalf contained in the hereinbefore-recited certificate of partition, the receipt of which sum he the said [A.] doth hereby acknowledge, and from the same doth release and discharge the said [B.], her executors, administrators, and assigns: and also in consideration of the sum of 10*s.* of like lawful money at the same time paid by the said [*releasee to uses*] to the said [P.], the receipt whereof is hereby acknowledged, he the said [P.], at the request and by the direction as well of the said [A.] as of the said [W.] and [B.], his wife, [L.], [M.], [G.], and [H.], testified by their severally executing these presents, *Hath* bargained, sold, and released, and by these presents *Doth* bargain, &c.; And the said [A.], [B.], [L.], [M.], [G.], and [H.], according to their respective rights, shares, and interests, *Have*, and each and every of them *Hath*, granted, bargained, sold, released, and confirmed, and by these presents *Do*, and each and every of them *Doth* grant, &c., unto the said [*releasee to uses*] and his heirs, (in the actual possession of the said [*releasee to uses*] now being, by virtue of a bargain and sale to him thereof made by the said [P.], [A.], [B.], [L.], [M.], [G.], and [H.], by indenture bearing date the day next before the day of the date of these presents, for one year, commencing from the day next before the day of the date of the same indenture, and by force of the statute made for transferring uses into possession); ALL

Testatum:

In obedience to decree, and in consideration of sum paid for equality of partition, surviving trustee of settlement releases to releasee to uses.

Reference to lease for a year.

Parcels.

(*c*) Settlement on the marriage of [W.] and [B.]

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AND SINGULAR the messuages, farms, lands, hereditaments, and premises, mentioned and set forth in the several schedules hereunder written, and which are also delineated in the map or plan indorsed on these presents, (being the hereditaments comprised in the hereinbefore-recited indentures of lease and release, of the —— and —— days of ——, and certificate of partition), together with all (*add general words*); And the reversion and reversions, remainder and remainders, rent, issues, and profits thereof; And all the estate, right, title, interest, trust, benefit, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of them the said [P.], [A.], [B.], [L.], [M.], [G.], and [H.], respectively, in and to the said messuages, farms, lands, and hereditaments; TO HAVE AND TO HOLD all and singular the messuages, farms, lands, and hereditaments hereinbefore described, and hereby released, or intended so to be, with their appurtenances, unto the said [*releasee to uses*] and his heirs for ever, to the several uses, upon the trusts, and for the intents and purposes, hereinafter expressed and declared concerning the same, that is to say, AS TO, FOR, AND CONCERNING all and singular such and so many and such parts of the messuages, farms, lands, and hereditaments hereby released, or intended so to be, as are mentioned or described in the first schedule to these presents, and which are in the map or plan indorsed on the last skin thereof distinguished by a red colour, (being the hereditaments allotted to the said [A.], in and by the hereinbefore-recited certificate of partition as aforesaid), (*to uses to prevent dower in favour of* [A.], *and declaration negativing his widow's title to dower*); AND AS TO, FOR, AND CONCERNING the residue of the said messuages, farms, lands, and hereditaments, and which are mentioned and described in the second schedule to these presents, and in the map or plan indorsed on the last skin thereof, are distinguished by a green colour, (being the hereditaments which, in and by the hereinbefore-recited certificate of partition, were allotted to the said [B.], TO THE USE of the said [G.] and [H.], their heirs and assigns, for ever, Upon and for such and the same trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, declarations, and agreements, in all respects, as, under and by virtue of the hereinbefore-recited indentures of lease and release and settlement, of the —— and —— days of ——, the undivided sixth part or share, in or to which the said

And the reversion, &c.

And all the estate, &c.

Habendum.

Declaration of uses of one allotment;

—of the other allotment;

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[B.] became beneficially interested and entitled as hereinbefore stated during her life, and in or to which the said [L.] and [M.] became beneficially interested or entitled as aforesaid, in reversion or remainder immediately expectant on the decease of the said [B.], was and stood limited, settled, and subject to, immediately previous to the partition and division so made as aforesaid, and intended to be hereby completed and the execution of these presents; and to, for, or upon no other use, trust, intent or purpose whatsoever. (*Add covenant by* [P.] *with releasee, that he has not incumbered the entirety. Also by* [G.] *and* [H.] *severally, with* [A.], *that they have not incumbered the one undivided sixth limited to them by the lastly recited indentures of settlement*); And the said [A.], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [P.] and his heirs, in the manner following: that is to say, that, notwithstanding any act, deed, matter, or thing, made, done, or suffered by him the said [A.], or by the said [C.], [D.], [E.], and [F.], respectively, deceased, to the contrary, he the said [A.] hath now in himself good right and absolute authority to release, or otherwise assure, all and singular the five undivided sixth parts or shares, to which he became entitled as hereinbefore recited, of and in all such parts of the messuages, farms, lands, and hereditaments hereby released, or intended so to be, as were allotted to the said [B.] in and by the hereinbefore-recited certificate of partition, (being the hereditaments which, in the map indorsed on these presents, are marked with a green colour); To the uses, upon the trusts, and for the intents and purposes hereinbefore expressed and declared concerning the same, according to the true intent and meaning of these presents: *And also*, that the said five undivided sixth parts or shares shall, from time to time, and at all times hereafter, remain, continue, and be, to, for, and upon the same uses, trusts, intents, and purposes, and shall and may be peaceably and quietly held and enjoyed, and the rents and profits thereof received and taken accordingly, without any interruption or disturbance of, from, or by the said [A.], or his heirs, or any other person or persons lawfully claiming from, through, under, or in trust for him or them, or from, through, under, or in trust for the said [C.], [D.], [E.], and [F.], respectively, deceased, or by or through their or any of their acts, means, default, privity, consent or procurement; *And that* the said

Covenants by [A.]—that he has right to convey;

And that parts conveyed by him shall remain to the uses before declared,

Free from incumbrances;

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five undivided sixth parts or shares, so by him the said [A.] hereby released, or intended so to be, as aforesaid, of and in the same hereditaments and premises, are free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise shall be by him the said [A.], his heirs, executors, or administrators, effectually saved harmless and kept indemnified from and against all and all manner of estates, rights, titles, charges, and incumbrances, whatsoever, created or permitted by the said [A.], or by any other person or persons lawfully claiming, or to claim, by, from, through, under, or in trust for him, or by, from, through, under, or in trust for the said [C.], [D.], [E.], and [F.], respectively, deceased, or by or through their or any of their acts, means, default, privity, consent, or procurement; *And further*, that he the said [A.], and his heirs, and every other person whosoever rightfully claiming any estate, right, title, or interest in or to the five undivided sixth parts or shares by him hereby released, or intended so to be, of and in the hereditaments and premises so allotted to the said [B.] as aforesaid, by, from, through, under, or in trust for him or them, or by, from, through, under, or in trust for the said [C.], [D.], [E.], and [F.], respectively, deceased, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the proper costs and charges of the person or persons who for the time being shall be entitled to any estate or interest under or by virtue of the limitations hereinbefore declared concerning the same five undivided sixth parts or shares, make, do, execute, and perfect, or cause to be made, &c., all such further acts, deeds, and assurances in the law, for the more effectually conveying and assuring the five undivided sixth parts or shares hereby released, or intended so to be, of and in the last-mentioned hereditaments and premises, to the uses, upon the trusts, and for the intents and purposes hereinbefore declared concerning the same, or as near thereto as circumstances will then admit, as by the person or persons for the time being entitled as aforesaid, or his, her, or their counsel in the law, shall be reasonably required; so as no such further assurances contain or imply any more extensive warranty or covenant than against the acts and deeds of the person or persons only who shall be required to make and execute the same, and so as the person or persons who shall be required to make and execute such further assurances shall

Free from incumbrances;

and for further assurance.

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not be compelled or compellable to go or travel from his, her, or their usual place or places of abode. AND the said [W.], for himself, his heirs, executors, and administrators, but so far only as relates to or concerns the life interest of her the said [B.] of and in the one undivided sixth part or share to which she was entitled as aforesaid, of and in all such parts of the messuages, farms, lands, and hereditaments hereby released, or intended so to be, as were allotted to the said [A.] by the hereinbefore-recited certificate of partition;

Covenant by [W.], [L.], and [M.],

that the granting parties have right to convey;

And the said [L.] and [M.], for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and so far as relates to and concerns their respective shares and interests in the reversion or remainder in fee-simple, expectant on the decease of the said [B.] in the last-mentioned one-sixth part or share of and in the said hereditaments, do hereby, for themselves, their heirs, executors, and administrators, respectively hereby covenant and agree with the said [A.], his appointees, heirs, and assigns, in manner following, that is to say, that, for and notwithstanding any act, deed, matter, or thing whatsoever, made, done, or permitted by the said [B.], [L.], and [M.], respectively, the said [P.], [B.], [L.], [M.], [G.], and [H.], or some or one of them, now have in themselves, herself, or himself, full power and lawful and absolute authority to release or otherwise assure the one undivided sixth part or share, by them the said [P.], [B.], [L.], [M.], [G.], and [H.] hereby released, or intended so to be, of and in the messuages or tenements, pieces or parcels of ground and hereditaments, so as aforesaid allotted unto the said [A.], as hereinbefore mentioned, to the uses, upon the trusts, and for the intents and purposes hereinbefore declared concerning the same, according to the true intent and meaning of these presents; *And that* the said one undivided sixth part or share shall henceforth be, remain, and continue, to, for, and upon the same uses, trusts, intents, and purposes, and shall and may be peaceably and quietly held and enjoyed, and the rents and profits thereof, received and taken accordingly, without any interruption or disturbance whatsoever from or by the said [B.], [L.], and [M.], or the heirs of the said [L.] and [M.], or any other person or persons lawfully claiming from, through, under, or in trust for them or any of them, or by or through their or any of their acts, means, default, privity, consent, or procurement; *And that* the said

and that premises shall remain to the uses aforesaid,

free from in-

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one undivided sixth part or share is free and clear, and freely and clearly acquitted, exonerated, and discharged, and by the said [W.], [L.], and [M.], respectively, or their respective heirs, executors, or administrators, shall be effectually saved harmless and kept indemnified from and against all and all manner of estates, rights, titles, charges, and incumbrances, made, occasioned, or suffered by the said [B.], [L.], and [M.], or any person or persons rightfully claiming or to claim by, from, through, under, or in trust for them respectively, or by or through their or any of their acts, means, default, privity, consent, or procurement; *And further*, that they the said [B.], [L.], and [M.], and every other person whosoever rightfully claiming any estate, right, title, or interest in or to the one undivided sixth part or share by them respectively hereby released, or intended so to be, of and in the hereditaments and premises allotted to the said [A.] as aforesaid, by, from, through, under, or in trust for them or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [A.], his appointees, heirs, or assigns, make, do, execute, and perfect, or cause to be made, &c., all such further acts, deeds, and assurances in the law, for the more effectually conveying and assuring the last-mentioned sixth part or share hereby released, or intended so to be, of and in the said hereditaments and premises, to the uses, upon the trusts, and for the intents and purposes hereinbefore declared concerning the same, or as near thereto as circumstances will then admit; as by the said [A.], his appointees, heirs, or assigns, or his or their counsel in the law, shall be reasonably required; so as no such further assurances contain or imply any more extensive warranty or covenant than against the acts and deeds of the person or persons only who shall be required to make and execute the same, and so as the person or persons who shall be required to make and execute such further assurances shall not be compelled or compellable to go or travel from his, her, or their usual place or places of abode. IN WITNESS &c.

cumbrances;

and for further assurance.

5. APPOINTMENT TO TRUSTEE TO MAKE PARTITION.

5. DEED *of* APPOINTMENT *of* FREEHOLDS *by the Owners of* TWO UNDIVIDED *Moieties, empowering a third Person to make a* PARTITION, *and convey the* RESPECTIVE ALLOTMENTS *to the several Share Owners.*

Parties.

Recital of conveyance vesting property in partitioners.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [A.], of &c., of the first part; [B.], of &c., of the second part; and [C.], of &c., of the third part: WHEREAS, by indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being made between [S.], of the first part; [T.], of the second part; the said [A.], of the third part; and the said [B.], of the fourth part; All and singular the closes, pieces, or parcels of land and hereditaments hereinafter described, and hereby appointed or intended so to be, were, for the pecuniary considerations therein mentioned, conveyed and assured, and now stand limited, to the uses following, that is to say, as to one undivided moiety or equal half part thereof, to such uses, upon such trusts, and for such intents and purposes, and charged and chargeable with such sum or sums of money, and in such manner and form as the said [A.], by any deed or deeds to be executed by him, in the presence of one witness, should appoint, and in default of such appointment, to the use of the said [A.] and his assigns, during his life, with remainder to the use of the said [B.], his executors and administrators, during the life of the said [A.], in trust for him and his assigns, with remainder to the use of the said [A.], his heirs and assigns, for ever. (*Recite similar limitations of the other moiety in favour of* [B.]).

—of intention to make partition and conveyance.

AND WHEREAS the said [A.] and [B.] have agreed upon a partition and division of the said closes, pieces, or parcels of land and hereditaments, and they have requested the said [C.] to make a fair and equal partition and division of the same accordingly, and they have moreover agreed to limit and assure the same hereditaments to the uses hereinafter expressed, in order that the said [C.] may convey the several allotments, into which the same shall be divided by him as aforesaid, unto or for the benefit of the said [A.] and [B.] respectively, as they respectively shall direct,

to the intent that the same allotments respectively may be taken and enjoyed by the said respective parties in severalty. NOW THIS INDENTURE WITNESSETH, that, for the purpose of carrying the above-recited intention into effect, and in consideration of the premises, and also in consideration of the sum of 10*s.*, of &c., paid by the said [C.] to each of them the said [A.] and [B.], at or before the execution of these presents, the receipt whereof is hereby acknowledged, they the said [A.] and [B.] respectively, by virtue and in exercise and execution of the several powers and authorities respectively reserved to and vested in them respectively in and by the hereinbefore-recited indentures of lease and release, or one of them, and of every other power or authority enabling them respectively in this behalf, do by this present deed or writing, executed by them in the presence of and attested by one witness, absolutely and irrevocably direct, limit, and appoint, that ALL THOSE the two several undivided moieties, or equal half parts of them the said [A.] and [B.], of and in ALL THOSE (*describe parcels*), together with all and singular the rights, members, and appurtenances, to the said several closes, pieces, or parcels of land and premises respectively belonging and appertaining, shall, from and immediately after the execution of these presents, remain, continue, and be to the uses hereinafter declared concerning the same, that is to say, *Subject to such powers of appointment, to such uses*, upon such trusts, and for such intents and purposes, as the said [C.], in the exercise and execution of the several trusts, powers, and authorities hereinafter expressed and contained, shall, by any deed or deeds, to be attested by one witness, or more, or not attested, direct, limit, or appoint; And, in default of such direction, limitation or appointment, to such and the same uses, and upon and for such and the same trusts, intents, and purposes, as the said closes, pieces, or parcels of land, and hereditaments, were and stood limited and subject to immediately before the execution of these presents (*a*): And upon, to, or for no other use, trust, end, in-

5. APPOINTMENT TO TRUSTEE TO MAKE PARTITION.

Testatum.

[A.] and [B.] appoint their respective undivided moieties.

To such uses as [C.] shall appoint;

and in default, to the former uses.

(*a*) Though the Editor has not known any instance in practice of the adoption of limitations precisely similar to those in the text, in such a case as the present, yet they seem to be well adapted to answer the objects of the parties, enabling the referree to give effect to his partition by conveying the fee-simple to the respective parties, but reviving the old limitations in the event of his dying without exercising the power, thereby avoiding the inconvenience which might result from the event

Remarks upon the precedent in the text.

5. APPOINTMENT TO TRUSTEE TO MAKE PARTITION.

tent, or purpose whatsoever. PROVIDED ALWAYS, and it is hereby declared and agreed, that, immediately, or as soon as conveniently may be, after the execution of these presents, it shall be lawful for the said [C.] to enter into and upon the closes, pieces, or parcels of land and hereditaments hereby appointed, or intended so to be, in order to take a view, admeasurement, and survey thereof, and to do and execute all such other matters and things as shall be requisite and necessary for the ascertaining of the true and exact value of such closes, pieces, or parcels of land and hereditaments, and, in the absolute discretion of the said [C.], to make a fair, just, and equal partition and division of the same into two allotments or portions, according to such ascertained value thereof; And when and as soon as the said [C.] shall have divided and allotted the said closes, pieces, or parcels of land and hereditaments hereby appointed, or intended so to be, into two equal allotments or portions as aforesaid, then that it shall be lawful for the said [C.], and he is hereby authorized and empowered, without any further consent or concurrence on the part of the said [A.] and [B.], respectively, or their respective heirs or assigns, and notwithstanding the expression or intimation of their or any of their dissent or non-concurrence, to convey and assure one of the allotments or portions, into which the said closes, pieces, or parcels of land shall be divided as aforesaid, unto or for the benefit of the said [A.], his heirs or assigns, in such manner as he or they shall direct, and also to convey and assure the other of the said allotments or portions unto or for the benefit of the said [B.], his heirs or assigns, in such manner as he or they shall direct: to the intent that the said several allotments or portions into which the closes, pieces, or parcels of land and hereditaments hereby appointed, or intended so to be, shall be divided or allotted as aforesaid, shall and may thenceforth, and at all times for ever thereafter, be held and enjoyed by the said [A.] and [B.] respectively, and their respective heirs and assigns, in severalty, in lieu of and in full satisfaction for the respective undivided moieties of them the said [A.] and [B.] in the same closes, pieces, or parcels of land and hereditaments: PROVIDED ALSO, and it is hereby

Authority to [C.] to make partition.

Declaration that

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of the legal estate descending to the heir of [C.], which might be the consequence of vesting the fee in him.

declared and agreed by and between the said [A.] and [B.], that the partition and division, conveyance and assurance, to be made by the said [C.], as aforesaid, shall be binding and conclusive on them the said [A.] and [B.] respectively, and their respective heirs and assigns, and shall not be impeached or impeachable by either of them, or the appointees, heirs, or assigns of either of them, for or on account of any cause, matter, or thing whatsoever; *And further*, that the partition and division to be made by the said [C.] as aforesaid shall not be in anywise avoided, defeated, or disturbed, in consequence of the eviction, by title paramount or otherwise, of either of the said parties hereto, or any persons or person claiming under either of them respectively, from the hereditaments to be conveyed or assured to such party by the said [C.], nor shall the title of either of the said parties, or of any person or persons claiming under him, respectively, to the hereditaments to be conveyed or assured to him respectively by the said [C.] as aforesaid, depend upon the title of the other of the said parties, or his heirs, to the hereditaments to be conveyed and assured to the other of the said parties by the said [C.] as aforesaid, any rule at law or in equity to the contrary in anywise notwithstanding. (*Add usual covenants by* [A.] *and* [B.], *as to their respective moieties, with* [C.] *and his appointees,—that the respective powers are valid and subsisting,—that they have right to appoint,—that the premises shall remain to the uses declared, free from incumbrances, and for further assurances*). And each of them the said [A.] and [B.], for himself, his heirs, executors, and administrators, doth hereby covenant with the other of them, his executors and administrators, that in case he the said [A.] or [B.] shall or do impede, interrupt, or hinder, or attempt to impede, interrupt, or hinder, the said [C.] in the execution and performance of any of the several trusts, powers, and authorities hereby vested in the said [C.], then and in such case, and immediately thereupon, the said [A.] or [B.], as the case may be, his heirs, executors, or administrators, will pay to the other of them, his executors or administrators, the sum of £500 as and for liquidated damages, and not in the nature of a penalty, any rule at law or in equity notwithstanding. And lastly, it is hereby agreed and declared, that the costs, charges, and expenses of and attending the survey, partition, and division so intended to be made by the said [C.] as aforesaid, and of and

5. Appointment to trustee to make partition.

[C.'s] partition and conveyance shall be binding on the parties.

And that the title to one allotment shall not be dependent upon the title to the other.

Covenant by each to pay 500*l.* for liquidated damages in case of the covenantor interrupting [C.].

Costs of partition to be borne equally.

5. APPOINTMENT TO TRUSTEE TO MAKE PARTITION.

attending the execution of the several trusts, powers, and authorities hereby confided to and reposed in him, shall be paid and borne by the said [A.] and [B.] in equal moieties. IN WITNESS &c.

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6. APPOINTMENT UNDER POWER IN LAST DEED.

6. DEED *of* APPOINTMENT, *in* PURSUANCE *of the* POWER *vested in the* PERSON EMPOWERED *to make* PARTITION *by the last Deed,* CONVEYING *the several* ALLOTMENTS *to the respective* OWNERS *of the* UNDIVIDED SHARES. (*Indorsed on last Deed*).

THIS INDENTURE, made the —— day of ——, 18—,

Parties.

BETWEEN the within-named [C.], of the first part; the within-named [A.], of the second part; and the within-named [B.], of the third part: WHEREAS, shortly after the date and execution of the within-written indenture, the said [C.],

Recital of partition made by donee of power.

in pursuance and in execution of the power and authority in that behalf contained in the within-written indenture, proceeded to take an admeasurement and survey of the several closes, pieces, or parcels of land and hereditaments, whereof a partition and division were to be made by him as expressed in the within-written indenture, in order to ascertain the true and exact value thereof, and he then, to the best of his judgment and ability, made a fair, just, and equal partition and division of the same into two lots or portions, according to the ascertained value thereof; and the said [C.], in the further execution of the powers and authorities aforesaid, allotted and awarded all and singular so many and such parts of the several closes, pieces, or parcels of land and hereditaments as are comprised in the first schedule to these presents, unto the said [A.], in lieu of, and in satisfaction for, his undivided moiety or equal half part of and in the closes, pieces, or parcels of land and hereditaments appointed and assured in and by the within-written indenture; and the said [C.] awarded and allotted the residue of the said closes, pieces, or parcels of land, (being the hereditaments comprised in the second schedule to these presents), unto the said [B.], in lieu of and in full satisfaction for the undivided moiety or equal half part of the said [B.] of and in the several closes, pieces, or parcels of land and

hereditaments appointed and assured by the said within-written indenture. NOW THIS INDENTURE WITNESSETH, that, in pursuance and execution of the trusts and powers reposed in the said [C.] by the within-written indenture, and for the purpose of giving full and complete effect to the partition and division made by him as aforesaid, and in consideration of the premises, and also in consideration of the sum of 10*s.* of lawful money of Great Britain and Ireland paid by each of them the said [A.] and [B.] to the said [C.], at or before the execution of these presents, the several receipts whereof are hereby acknowledged, he the said [C.], by virtue and in exercise and execution of the power and authority given and reserved to him in that behalf in and by the within-written indenture, and of all other powers and authorities enabling him thereunto, *Doth* hereby direct, limit, and appoint, that *All and singular* the closes, pieces, or parcels of land and hereditaments comprised in or appointed or otherwise assured by the within-written indenture, and which are mentioned or described in the first and second schedules to these presents, shall henceforth remain, continue, and be to the uses, upon the trusts, and for the intents and purposes hereinafter expressed and declared concerning the same; (that is to say), *As to, for, and concerning* all such and so many and such parts of the closes, pieces, or parcels of land, appointed or otherwise assured in and by the within-written indenture, as are mentioned and described in the first schedule to these presents, To SUCH USES, upon such trusts, for such ends, intents, and purposes, and subject to such powers of appointment, and other powers, provisoes, and declarations, as the undivided moiety or equal half part of the said [A.] of and in the said closes, pieces, or parcels of land and hereditaments was and stood limited and subject to immediately before the execution of the within-written indenture, and to, for, or upon no other use, trust, intent, or purpose whatsoever; *And as to, for, and concerning* all such and so many and such parts of the said closes, pieces, or parcels of land and hereditaments as are mentioned or described in the second schedule to these presents, (being the residue or remaining parts of the said closes and hereditaments), To SUCH USES, upon such trusts, for such intents and purposes, and subject to such powers of appointment, and other powers, provisoes, and declarations,

6. APPOINTMENT UNDER POWER IN LAST DEED.

Testatum: For effectuating partition, donee of power appoints the lands.

As to lands in first schedule.

As to lands in second schedule.

6. APPOINTMENT UNDER POWER IN LAST DEED.

as the undivided moiety or equal half part of the said [B.] of and in the said closes, pieces, or parcels of land and hereditaments appointed or otherwise assured by the within-written indenture was and stood limited and subject to immediately before the execution of the within-written indenture; and upon, to, or for no other use, trust, intent, or purpose whatsoever. IN WITNESS &c.

FIRST SCHEDULE TO WHICH THE PRECEDING INDENTURE REFERS.

SECOND SCHEDULE TO WHICH THE PRECEDING INDENTURE REFERS.

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7. RELEASE AND DEED OF REVOCATION AND NEW APPOINTMENT.

7. RELEASE *in* FEE *and* DEED *of* REVOCATION *and* NEW APPOINTMENT, *carrying into Effect a* PARTITION *between the* ABSOLUTE OWNER *of one Moiety* IN FEE, *and the* TRUSTEES *of a* MARRIAGE SETTLEMENT, *exercising a* POWER *of* REVOCATION *and* NEW APPOINTMENT *over the* OTHER MOIETY.

Parties.

THIS INDENTURE, made the —— day of ——, 18—, BETWEEN [*owner in fee of one moiety*], of &c., of the first part; [*donees of power*], of &c., of the second part; and [*releasee to uses*], of &c., of the third part: WHEREAS [A. B.], late of ——, deceased, being seised to him and his heirs in fee-simple of the pieces or parcels of ground and hereditaments hereinafter described, which are of gavelkind tenure, departed this life intestate, leaving the said [*owner in fee*] and [C. D.], his co-heirs at law, him surviving: AND WHEREAS, by indentures of lease and release, bearing date respectively the —— and —— days of ——, the release being of three parts, and made between the said [C. D.], of the first part; [E. F.], of &c., of the second part; and the said [*donees*], of the third part, (being the settlement executed previously to the marriage of the said [C. D.] and

Recital of seisin and death of last owner;

—settlement of one undivided moiety;

[E. F.]), all that the one undivided moiety or equal half part of him the said [C. D.] of and in the pieces or parcels of ground and hereditaments, the inheritance in fee-simple whereof had descended to the said [*owner in fee*] and [C. D.] as aforesaid, was conveyed and assured to the uses, upon the trusts, for the intents and purposes, and subject to the powers, provisoes, declarations, and agreements therein expressed and declared concerning the same; And in the said indenture was contained a power enabling the said [*donees*], or the survivor of them, or other the trustees or trustee for the time being of the said indenture of settlement, to join and concur with the person or persons for the time being entitled to the other undivided moiety or equal half part of the said hereditaments, or empowered to make a partition thereof, in making a complete and effectual partition and division of the pieces or parcels of ground and hereditaments whereof one undivided moiety was thereby assured, and to pay or receive any sum or sums of money for equality of partition; and for the purpose of giving effect to the power and authority thereinbefore contained, the said [*donees*], or the survivor of them, or the trustees or trustee for the time being as aforesaid, were or was authorized and empowered, by any deed or deeds to be executed by them or him in the presence of and attested by two credible witnesses, to revoke and make void all and every the uses, trusts, intents, and purposes, powers, provisoes, declarations, and agreements, in the said indenture of release expressed and declared of and concerning the one undivided moiety or equal half part thereby released, or intended so to be, of and in the said pieces or parcels of ground and hereditaments, and by the same or any other deed or deeds, to be executed in the manner aforesaid, to limit and declare any new or other uses, estates, and limitations concerning the same: And whereas the said [*owner in fee*], and also the said [*donees*], in execution of their above-recited power in this behalf, have determined and agreed to make an equal partition and division of the pieces or parcels of ground and hereditaments hereinafter described and hereby released, or intended so to be, to the intent that the respective divided parts thereof might thenceforth be taken and enjoyed in severalty by the persons respectively who would be entitled to the undivided shares of the same hereditaments, if the same had remained entire

7. RELEASE AND DEED OF REVOCATION AND NEW APPOINTMENT.

—power to make partition.

—agreement for partition;

7. RELEASE AND DEED OF REVOCATION AND NEW APPOINTMENT.

—as to the respective allotments agreed upon.

and undivided: AND WHEREAS, after a careful admeasurement, survey, and valuation of the said pieces or parcels of ground and hereditaments, by competent and indifferent persons, as well on the part of the said [*donees*] as of the said [*owner in fee*], it has been determined and agreed, that the pieces or parcels of ground firstly hereinafter described shall be accepted and taken by the said [*owner in fee*] in lieu of and in substitution for his undivided share in the hereditaments hereby assured, to be enjoyed by the said [*owner in fee*], his heirs and assigns, in severalty, and that the pieces or parcels of ground and hereditaments secondly hereinafter described shall be accepted and taken by the said [*donees*] in lieu of and in substitution for the undivided share comprised in the hereinbefore-recited indenture of settlement, to be enjoyed by the person or persons entitled thereto in severalty.

Testatum:

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and for the purpose of carrying into effect the said intended partition, and in consideration of the premises, and also in consideration (*state nominal consideration*), he the said [*owner in fee*] *Doth* by these presents grant, bargain, sell, and release unto the said [*releasee to uses*], and his heirs, (in the actual possession, &c.), ALL THAT the undivided moiety or equal half part or share of him the said [*owner in fee*], of and in the several pieces or parcels of ground and hereditaments hereinafter described; (that is to say), 1stly. ALL THAT &c. (*describe parcels*). 2ndly. ALL THAT &c. (*describe parcels*), together with all ways, &c.; And the reversion, &c.; And all the estate, &c.; TO HAVE AND TO HOLD the said undivided moiety or equal half part or share hereby released, or intended so to be, of and in all and singular the pieces, or parcels of ground hereinbefore described, and other the premises hereby released, or intended so to be, unto the said [*releasee to uses*], and his heirs, for ever, to the uses, upon the trusts, and for the intents and purposes hereinafter expressed and declared of and concerning the other undivided moiety or equal half part or share of and in the said hereditaments.

Release by owner in fee of one undivided moiety.

Habendum.

Further *testatum:*

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement in this behalf, and for effectuating the said intended partition, and in consideration of the premises, the said [*donees*], by virtue, and in exercise and

Donees of power revoke uses of settlement.

7. RELEASE AND DEED OF REVOCATION AND NEW APPOINTMENT.

execution of the power and authority in this behalf given and reserved to them in and by the hereinbefore-recited indenture of release or settlement, and of every other power and authority enabling them thereunto, *Do*, by this present deed, executed by them the said [*donees*] in the presence of and attested by two credible witnesses, absolutely and irrevocably revoke and make void all and singular the uses, trusts, powers, provisoes, declarations, and agreements expressed and declared of and concerning the one undivided moiety or equal half part by the above-recited indentures of lease and release conveyed and assured, or intended so to be, of and in the pieces or parcels of ground and hereditaments hereinbefore described, so far as the same are now subsisting, undetermined, and capable of taking effect. AND THIS INDENTURE LASTLY WITNESSETH, that, in further pursuance of the above-recited agreement in this behalf, and for further effectuating the said intended partition, and in consideration of the premises, they the said [*donees*], by virtue and in exercise and execution of the power or authority in this behalf given or reserved to them in and by the hereinbefore-recited indenture, and of every other power and authority enabling them thereunto, *Do*, by this present deed executed by them the said [*donees*] in the manner aforesaid, absolutely and irrevocably direct, limit, and appoint, that ALL THAT the undivided moiety or equal half part, settled and assured by the hereinbefore-recited indentures of lease and release, or one of them, of and in the several pieces or parcels of ground and hereditaments firstly and secondly hereinbefore described, with their and every of their appurtenances, shall henceforth remain, continue, and be to the uses, upon the trusts, for the intents and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinafter expressed and declared of and concerning the same; (that is to say), *As to, for, and concerning* the several pieces or parcels of ground and hereditaments firstly hereinbefore described, TO THE USE of him the said [*owner in fee*], his heirs and assigns, for ever; *And as, to, for, and concerning* the pieces or parcels of ground and hereditaments secondly hereinbefore described, with their appurtenances, TO SUCH USES, upon such trusts, for such intents and purposes, and under and subject to such powers, provisoes, declarations, and agree-

Further *testatum*:

Donees of power appoint to new uses.

Declaration of uses.

7. RELEASE AND DEED OF REVOCATION AND NEW APPOINTMENT.

ments, (except the hereinbefore-recited power to make partition), as are expressed and declared in and by the hereinbefore-recited indenture of release or settlement, of and concerning the one undivided moiety or equal half part thereby released, or intended so to be, of and in the pieces or parcels of ground and hereditaments firstly and secondly hereinbefore described, or upon, for, under, or subject to such and so many of the same uses, trusts, intents, and purposes, powers, provisoes, declarations, and agreements, as are now subsisting undetermined, or capable of taking effect. (*Add usual limited covenants for title by the owner in fee as to one undivided moiety, with the releasee to uses, his cestuis que use, heirs, and assigns; also by donees with owner in fee as to the other moiety, that they have not incumbered*). IN WITNESS &c.

Covenants.

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8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

8. [PARTITION (*by separate Deeds*) *of a* FREEHOLD *Estate, which has descended in* FEE-SIMPLE *to* FIVE CO-HEIRESSES, *of whom two are* MARRIED, *a third has* DIED, *having* DEVISED *her undivided Share to a married Man, whose Wife is contingently entitled to* DOWER, *and the remaining two are unmarried; one of the married Heiresses has* SETTLED *her Share, one of the unmarried Heiresses has* MORTGAGED *her Share, and the other has* SOLD *hers.*

[A.] CONVEYANCE *and* APPOINTMENT *of a divided fifth Part of the Lands held in Coparcenary, to one of the* MARRIED CO-HEIRESSES *in* FEE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [M.], of &c., and [A.] his wife, of the first part; [N.], of &c., and [B.] his wife, and [X.], of &c., and [Y.], of &c., (trustees of the settlement made on the marriage of said [N.] and [B.]), of the second part; [*devisee*], of &c., and [*wife*], his wife, of the third part; [C.], of &c., spinster, and [*mortgagee*], of &c., of the fourth part; [D.], of &c., spinster, and [*purchaser*], of &c., of the fifth part; and [*releasee to uses*], of &c., of the sixth part. WHEREAS [*ancestor*],

late of ——, departed this life on or about the —— day of —— intestate, and is buried in the parish church of ——, and administration of his goods, chattels, and credits was granted to the said [A.] and [B.], by the Prerogative Court of the Archbishop of Canterbury, on the —— day of ——. And whereas the said [*ancestor*], at the time of his decease, was seised for his own sole use and benefit of the lands hereinafter described, together with other lands, for an absolute estate of inheritance in fee-simple, in possession, which descended upon the said [A.], [B.], [C.], [D.], and [*deceased daughter*], his only surviving children and issue, as his co-heiresses at law. And whereas the said [*deceased daughter*] departed this life on or about the —— day of ——, and is buried in the said parish church of ——: And whereas the said [*deceased daughter*], by her will, dated the —— day of ——, devised all her real estates to the said [*devisee*], his heirs and assigns, for ever, to and for his own use and benefit: And whereas, by indentures of lease and release and settlement, the release and settlement being dated the —— day of ——, and made between the said [B.], of the first part, the said [N.], of the second part, the said [X.] and [Y.], of the third part, and [U.], of the fourth part, the undivided fifth part or share of the said [B.], of &c., in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, was released or otherwise assured unto the said [X.] and [Y.], and their heirs, to hold to them and their heirs, to the uses in the said indenture of release and settlement expressed; and in which indenture of release and settlement is contained a power, authorizing and requiring the said [X.] and [Y.], at the request and by the direction of the said [M.] and [B.], testified by writing under their hands, to consent to and join in any partition of the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, and for that purpose, by any deed or deeds, absolutely to revoke, determine, and make void the uses in the said indenture of release and settlement limited and declared of and concerning the undivided fifth part or share of the hereditaments therein comprised, or any part thereof, and by the same deed or deeds to limit, declare, direct, or appoint any use or uses, estate or estates, trust or trusts, of the hereditaments the uses of which might be so revoked, which it might be deemed necessary or expedient to limit, declare, direct, or appoint,

8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

Recital of death of ancestor;

—seisin;

—heirship;

—death of one of the heiresses;

—devise of her share;

—of settlement of another share;

—power of revocation and new appointment of uses;

8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

in order to effectuate any such partition: AND WHEREAS, by indentures of lease and release, the latter bearing date the —— day of ——, and made between the said [C.], of the one part, and the said [*mortgagee*], of the other part, the undivided fifth part or share of the said [C.], of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, was conveyed to the use of the said [*mortgagee*], his heirs and assigns, by way of mortgage, for securing the sum of £—— and interest, which principal sum of £—— is still due upon such mortgage security; AND WHEREAS the said [*purchaser*] hath contracted for the absolute purchase of the undivided part or share of the said [D.], of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid; AND WHEREAS it has been agreed between the parties hereto, that partition shall be made of the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, and that the hereditaments hereinafter described shall belong to the said [A.] in severalty, as and for her share thereof, and shall be conveyed to her in manner hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement for partition of the hereditaments aforesaid, and as to the said [X.] and [Y.], at the request and by the direction of the said [N.] and [B.] his wife, testified by this present writing under their hands, and in exercise of the power or authority contained in the above-in-part-recited indenture of release and settlement, and of every other power and authority them in this behalf enabling or authorizing, and in consideration of the said agreement for partition having been carried into execution so far as concerns the said parties hereto of the second, third, fourth, and fifth parts respectively, as they do respectively hereby admit and acknowledge; And also, in consideration of 10*s.* of lawful British money, to each of them the said [M.], and [A.] his wife, [N.], and [B.] his wife, [X.], [Y.], [*devisee*], and [*wife*] his wife, [C.], [*mortgagee*], [D.], and [*purchaser*], already paid, the respective receipts whereof are hereby acknowledged, they the said [M.], &c., according to their respective shares and interests therein, *Do*, and each of them *Doth*, hereby grant, bargain, sell, release, quit-claim, and confirm unto the said [*releasee to uses*] and his heirs (in the actual possession of the said [*releasee to uses*] now being by virtue of a bargain and sale, bearing date the day next before the day of the date

—mortgage of another share.

Agreement for partition.

Testatum.

of these presents); All &c. (*parcels allotted* to [A.]), together with all and singular the rights and appurtenances to the said hereditaments, or any part thereof, actually or in reputation belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof and therefrom; AND ALL the estate, right, title, interest, property, possession, benefit, claim, and demand whatsoever of them the said [M.], &c., respectively, in or to the said hereditaments and premises, or any part thereof; TO HAVE AND TO HOLD all and singular the hereditaments and premises hereinbefore devised, and hereby released or appointed, or otherwise assured, or intended so to be, unto the said [*releasee to uses*], and his heirs for ever, free from all right and title to dower of the said [*wife of devisee*], the wife of the said [*devisee*], TO SUCH USES, upon such trusts, in such parts or shares, and with, under, and subject to such powers, provisoes, conditions, and charges, as the said [A.], notwithstanding her present or any future coverture, shall, by any deed or deeds, or by will, appoint, and in default of or subject to any such appointment, to the use of the said [A.], her heirs and assigns, for ever, for her and their absolute use and benefit, and to, for, and upon no other use, trust, intent, or purpose whatsoever. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the premises, and of 10*s.* to each of them the said [X.] and [Y.] by the said [*releasee to uses*] already paid, the said [X.] and [Y.], at the request and by the direction of the said [N.] and [B.], testified by their executing these presents, and for the purpose of carrying the aforesaid agreement for partition into effect, do, by this present deed, absolutely and for ever revoke, determine, and declare void all the uses, trusts, intents, and purposes in and by the said indenture of release and settlement of the —— day of —— limited or declared of and concerning the hereditaments and premises hereby released or appointed, or intended so to be; and do further direct and appoint, that the said hereditaments and premises shall henceforth be and remain to the uses, intents, and purposes hereinbefore declared concerning the same. And the said [M.] (*a*), for himself, his heirs, executors,

8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

All the estate.

Habendum,

To the use of A.'s appointment; in default, to her use in fee.

Further *testatum*:

Trustees of settlement revoke uses and re-appoint to uses above declared.

Covenants for title.

(*a*) [The husband of the lady whose share is conveyed enters into the covenants for title with the releasee to uses, in order that if the

Remark as to covenants.

8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

and administrators, and for and against the acts and defaults of himself, and the said [A.] his wife, and the said [*ancestor*], deceased, and those claiming through or under or in trust for them respectively, and for the right, title, possession, and further assurance of one undivided fifth part of the hereditaments and premises hereby released or appointed, or otherwise assured, or intended so to be, but not further or otherwise: And the said [N.], for himself, his heirs, executors, and administrators, and for and against the acts and defaults of himself, and the said [B.] his wife, and the said [*ancestor*], deceased, and those claiming through, under, or in trust for them respectively, and for the right, title, possession, and further assurance of one other undivided fifth part of the hereditaments and premises hereby released or appointed, or otherwise assured, or intended so to be, but not further or otherwise; and the said [*devisee*], for himself, his heirs, executors, and administrators, and for and against the acts and defaults of himself and the said [*ancestor*], deceased, and the said [E.], deceased, and those claiming through, under, or in trust for them respectively, and for the estate, right, title, possession, and further assurance of one other undivided fifth part of the hereditaments and premises hereby released or appointed, or otherwise assured, or intended so to be; And the said [C.], for herself, her heirs, executors, and administrators, and for and against the acts and defaults of herself and the said [*ancestor*], deceased, and those claiming through, under, or in trust for them respectively, and for the right, title, possession, and further assurance of one other undivided fifth part of the hereditaments hereby released or appointed, or otherwise assured, or intended so to be, but not further or otherwise; And the said [D.], for herself, her heirs, executors, and administrators, and for and against the acts and defaults of herself and the said [*ancestor*], deceased, and those claiming through, under, or in trust for them respectively, and for the right, title, possession, and further assurance of the remaining un-

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estate should be sold during the coverture, a purchaser may take a conveyance by way of appointment, without entirely losing the benefit of covenants which run with the land. Of course, in such case any covenants which the husband may enter into against acts done in the interval between the execution of the present deed and the conveyance to the purchaser, will be, according to the received opinion, mere covenants in gross.]

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divided fifth part of the hereditaments hereby released or appointed, or otherwise assured, or intended so to be, but not further or otherwise, do hereby severally covenant and agree with the said [*releasee to uses*], and his heirs, that, notwithstanding any act, deed, matter, or thing whatsoever, made or done, or permitted to be made or done, by the said [M.], and [A.] his wife, [N.], and [B.] his wife, [*devisee*], [C.], and [D.], respectively, or the said [*ancestor*], deceased, or the said [E.], deceased, or any of them, or those claiming through, under, or in trust for them or any of them, to the contrary, the said [M.], and [A.] his wife, [N.], and [B.] his wife, [*devisee*], [C.] [*mortgagee*], and [D.], respectively, or some or one of them, are or is (subject only to the uses, trusts, intents, and purposes in and by the aforesaid indenture of release and settlement of the —— day of —— limited and declared of and concerning one undivided fifth part of the same hereditaments and premises) seised to them and their heirs, or him or her, and his or her heirs, of a clear, rightful, and absolute estate of inheritance in fee-simple in possession, in the hereditaments and premises hereby released or appointed, or otherwise assured, or intended so to be; and that, notwithstanding any such act, deed, matter, or thing, as aforesaid, the said [M.], and [A.] his wife, [N.], and [B.] his wife, [X.], and [Y.] [*devisee*], [C.] [*mortgagee*], and [D.], respectively, have in themselves good right, and lawful and absolute authority, by these presents, to release, appoint, or otherwise assure the said hereditaments and premises to the uses and in manner aforesaid, according to the true intent and meaning of these presents; *And also*, that the hereditaments and premises hereby released or appointed, or otherwise assured, or intended so to be, shall, from time to time and at all times hereafter, remain to the several uses hereinbefore declared concerning the same, and shall be peaceably and quietly held and enjoyed accordingly, without any eviction or interruption whatsoever from or by the said [M.], and [A.] his wife, [N.], and [B.] his wife, [X.], and [Y.] [*devisee*], and [*wife*] his wife, [C.], and [D.] respectively, or their respective heirs, or those claiming from, through, under, or in trust for them or the said [*ancestor*], deceased, or the said [E.], deceased, respectively; *And that* free and clear, or freely, clearly, and absolutely discharged, or by the said [M.], [N.] [*devisee*], and [C.] and [D.], respectively, their respective heirs, execu-

—that they are seised in fee; (subject to uses and settlement of one share);

—have right to convey;

—for quiet enjoyment,

free from incumbrances.

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tors, or administrators, effectually kept indemnified from or against all former or other estates, rights, titles, charges, and incumbrances whatsoever, made, created, or occasioned by the said [M.], and [A.] his wife, [N.], and [B.] his wife [*devisee*], [C.], and [D.], or the said [*ancestor*], deceased, or the said [E.], deceased, or any person or persons claiming from, through, under, or in trust for them respectively, or by or through their respective acts, default, privity, consent, or procurement; *And further*, that the said [M.], and [A.] his wife, [N.], and [B.] his wife [*devisee*], and [*wife*] his wife, [C.], and [D.], and their respective heirs, and every person whosoever rightfully claiming from, through, under, or in trust for them, or for the said [*ancestor*], deceased, or the said [E.], deceased, respectively, will, from time to time and at all times hereafter, on the request, and at the costs and charges of the said [A.], her heirs, appointees, or assigns, make, do, acknowledge, execute, and perfect every such lawful act, deed, conveyance, or assurance, in the law whatsoever, for the more effectual releasing, appointing, or otherwise assuring of the hereditaments and premises hereby released or appointed, or otherwise assured, or intended so to be, to the uses aforesaid, or otherwise, as the said [A.], her heirs, appointees, or assigns, shall direct, as by the said [A.], her heirs, appointees, or assigns, or her or their counsel in the law, shall be reasonably required, so as such further assurances shall not contain in them or imply any further or more general covenant or warranty than against the acts, deeds, and defaults of the person or persons who shall be required to make, acknowledge, or execute the same, and so as the person or persons making the same shall not be obliged to travel from his, her, or their place or places of abode. (*Covenants by* [X.] *and* [Y.] *and* [*mortgagee*], *that they have not incumbered. Declaration negativing implied mutual warranty, ut ante*, p. 617, *and covenant by trustees of* [B.'s] *marriage settlement, and by* [*mortgagee*], *respectively, that they have not incumbered, ut ante*, p. 617).

Further assurance.

Recital that title-deeds are in custody of devisee.

AND WHEREAS the title-deeds enumerated in the schedule hereunto annexed relate to certain hereditaments which have been allotted and assured to the said [*devisee*] under the aforesaid agreement for partition, as well as to the title to the hereditaments hereby released or appointed, or otherwise assured, or intended so to be, and such deeds are intended to remain in the custody of the said [*devisee*], his

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heirs and assigns. NOW THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the premises, the said [*devisee*], for himself, his heirs, executors, and administrators, *Doth* hereby covenant and agree with the said [*releasee to uses*], and his heirs, that he the said [*devisee*], his heirs and assigns, will and shall, from time to time and at all times hereafter, unless prevented by some inevitable accident, upon the request, and at the costs and charges of the said [A.], her heirs, appointees, or assigns, produce and shew, or cause or procure to be produced and shewn, unto the said [A.], her heirs, appointees, or assigns, or to the counsel, attorneys, solicitors, agents, or arbitrators of her or them, or any of them, or at any trial or hearing, commission or examination in or before, or directed by, any court or courts of law or equity, or other court of judicature, or any arbitrator or arbitrators or umpire in the United Kingdom or otherwise, as often as occasion shall require, all and singular or any of the deeds, instruments, or writings specified in the schedule hereunder written, for the purpose of manifesting and defending the title or possession of her the said [A.], her heirs, appointees, or assigns, to or of the hereditaments and premises hereby released or otherwise assured, or intended so to be, or any part thereof, and will and shall, unless so prevented as aforesaid, at the like request, costs, and charges, deliver to the said [A.], her heirs, appointees, or assigns, any abstract or abstracts, attested or unattested copies or copy, of all or any of the said deeds, instruments, and writings, or any part thereof respectively, and will and shall permit and suffer the said [A.], her heirs, appointees, or assigns, or such person or persons as she or they may nominate for that purpose, to compare and examine such abstract or abstracts, copies or copy, with the originals. IN WITNESS &c.

Further *testatum:*

Devisee covenants to produce title-deeds;

—and to deliver copies.

MEMORANDUM, *&c. of* ACKNOWLEDGMENT, (*ut ante*, Vol. 5, p. 610).

8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

[B.] [CONVEYANCE *of another divided Fifth Part of the Lands held in Coparcenary, to the* USES *of the* MARRIAGE SETTLEMENT *of another Co-heiress.*

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [N.], of &c., and [B.] his wife, and [X.] and [Y.], of &c., (trustees of the settlement made on the marriage of said [N.] and [B.]), of the first part; [M.], of &c., and [A.] his wife, of the second part; [*devisee*], of &c., and [*wife*] his wife, of the third part; [C.], of &c., spinster, and [*mortgagee*], of &c., of the fourth part; [D.], of &c., spinster, and [*purchaser*], of &c., of the fifth part; and [*releasee to uses*], of &c., of the sixth part:

Recitals.

WHEREAS (*recite seisin and death of ancestor, heirship, death, and will of deceased co-heiress, settlement on the marriage of* [B.], *mortgage by* [C.], *and contract for sale by* [D.], *ut ante*, p. 646). AND WHEREAS it has been agreed between the parties hereto, that a partition shall be made of the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, and that the hereditaments hereinafter described shall be conveyed and assured in manner hereinafter contained, as and for the full and complete share of the said [B.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid.

Testatum.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, &c., (*ut ante*, p. 648), and also in consideration of 10*s.* of lawful British money to each of them the said [X.] and [Y.], [N.], and [B.] his wife, [M.], and [A.] his wife, [*devisee*], and [*wife*] his wife, [C.], [*mortgagee*], [D.] and [*purchaser*], already paid, the respective receipts whereof are hereby acknowledged, they the said

Habendum.

[X.], [Y.], &c., do hereby grant, &c., (*ut ante*, p. 648), TO HAVE AND TO HOLD all and singular the hereditaments and premises hereinbefore described, and hereby released or appointed, or otherwise assured, or intended so to be, unto the said [*releasee to uses*] and his heirs for ever, TO THE USES, upon the trusts, and with, under, and subject to the powers, provisoes, declarations, and agreements in and by the above-recited indenture of release and settlement of the —— day

of —— contained, limited, and declared of and concerning the undivided fifth part or share of the said [B.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, or such of them as are now subsisting or capable of taking effect, and to, for, or upon no other use, trust, intent, or purpose whatsoever (*a*). (*Covenants for title, &c., against incumbrances, clause negativing implied mutual warranty, and covenant for production of title-deeds, ut ante*, p. 649).] 8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

MEMORANDUM, *&c. of* ACKNOWLEDGMENT, (*ut ante*, Vol. 5, p. 610).

(*a*) [The revocation of the uses of the settlement contained in the other deeds (*ut ante*, p. 649) could not be inserted in this deed without some *apparent* inconsistency, and is not required, inasmuch as it is only necessary that such uses should be revoked so far as concerns the shares conveyed by the other deed. There is not the same inconsistency in the trustees joining in the conveying part.] Remark on the precedent.

[C.] [CONVEYANCE *and Appointment of another divided Fifth Part of the Lands held in Coparcenary, to the* USES *and upon the* TRUSTS *limited and declared in a prior* MORTGAGE-DEED *concerning the undivided Share of another Co-heiress* (*b*). 8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

THIS INDENTURE, made the —— day of ——, BETWEEN [C.], of &c., spinster, of the first part; [M.], of &c., and [A.] his wife, of the second part; [N.], of &c., and [B.] his wife, and [X.], of &c., and [Y.], of &c., (trustees of the settlement made on the marriage of the said [N.] and [B.]), of the third part; [*devisee*], of &c., and [*wife*] his wife, of &c., of the fourth part; [D.], of &c., spinster, and [*purchaser*], of &c., of the fifth part; and [*mortgagee*], of &c., of the sixth part (*c*). WHEREAS (*recitals as in the former precedents*). AND WHEREAS it has been agreed between the parties hereto, that partition shall be made of the heredita- Parties. Recitals.

(*b*) [The conveyance of the share allotted to the devisee of the deceased co-heiress will (with the omission of the covenant to produce title-deeds) follow the form of the first precedent given above.]

(*c*) [The conveyance may be made, as in the former precedents, to a releasee to uses, in which case the mortgagee will be a party (with the

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ments whereof the said [*ancestor*] so died seised as aforesaid; and that the hereditaments hereinafter devised shall belong to the said [C.] in severalty as and for her share thereof, and shall be conveyed and assured in manner hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, &c., (*ut ante*, p. 648), and also in consideration of 10*s.* of lawful British money to each of them the said [C.], [M.], and [A.] his wife, [N.], and [B.] his wife, [X.], [Y.], [*devisee*], and [*wife*] his wife, [D.], and [*purchaser*], already paid, the respective receipts whereof are hereby acknowledged, they the said [C.], &c. do hereby grant, &c., (*ut ante*, p. 648), To HAVE AND TO HOLD all and singular the hereditaments and premises hereinbefore described, and hereby released or appointed, or otherwise assured, or intended so to be, unto the said [*mortgagee*] and his heirs for ever, To THE USES, upon the trusts, and with, under, and subject to the powers, provisoes, declarations, and agreements in and by the above-recited indenture of release and mortgage of the —— day of —— limited, declared, and contained of and concerning the undivided fifth part or share of the said [C.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid, and such of them as are now subsisting or capable of taking effect, and to, for, and upon no other use, trust, intent, or purpose whatsoever (*d*). (*Covenants for title and against incumbrances, clause negativing implied mutual warranty, and covenants for production of title-deeds, ut ante*, p. 649). IN WITNESS &c.

Testatum.

Habendum.

Uses.

MEMORANDUM, *&c. of* ACKNOWLEDGMENT, (*ut ante*, Vol. 5, p. 610).

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mortgagor) of the first part, and will join in the granting part. It is unimportant which mode of framing the conveyance is adopted. The deed, it is conceived, will only require the common stamp upon a partition.]

(*d*) [It is assumed, either that the day of redemption named in the mortgage-deed has passed, or that that deed contains a proviso for the *reconveyance* of the mortgaged estate to the mortgagor on payment of the principal and interest, and not a proviso for making the conveyance to the mortgagee *void* on such payment: otherwise, it will be proper to make the present conveyance to the use of the mortgagee, &c., with a proviso for reconveyance to the mortgagor, and all the clauses usually inserted in a mortgage-deed. This variation in the form of the deed does not seem to render it liable to any further stamp-duty.]

[D.] [CONVEYANCE *and Appointment of another divided Fifth Part of the Lands held in Coparcenary to a* PURCHASER *of the undivided Share of another Co-heiress.*

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THIS INDENTURE, made the —— day of ——, BETWEEN [D.], of &c., spinster, of the first part; [M.], of &c., and [A.] his wife, of the second part; [N.], of &c., and [B.] his wife, and [X.], of &c., and [Y.], of &c., (trustees of the settlement made on the marriage of the said [N.] and [B.]), of the third part; [*devisee*] of &c., and [*wife*], of the fourth part; [C.], of &c., spinster, and [*mortgagee*], of &c., of the fifth part; and [*purchaser*], of &c., of the sixth part. WHEREAS (*recitals as in the former precedents*). AND WHEREAS it has been agreed between the parties hereto, that partition shall be made of the hereditaments whereof the said [*ancestor*] so died seised as aforesaid; and that the hereditaments hereinafter described shall be conveyed and assured in severalty in manner hereinafter contained, as and for the full and complete share of the said [D.] of and in the hereditaments whereof the said [*ancestor*] so died seised as aforesaid. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, (*ut ante*, p. 648), and in consideration of the sum of £—— of lawful British money by the said [*purchaser*] to the said [D.] in hand paid at or before the sealing and delivery of these presents, the receipt whereof the said [D.] doth hereby acknowledge, and from the same and every part thereof doth, by these presents, for ever discharge the said [*purchaser*], his heirs, executors, and administrators; and also in consideration of 10*s.* of like lawful money to each of them the said [M.], and [A.] his wife, [N.], and [B.] his wife, [X.], [Y.], [*devisee*] and [*wife*] his wife, [C.], and [*mortgagee*], already paid, the respective receipts whereof are hereby acknowledged, they the said [D.], [M.], and [A.] his wife, &c., do hereby grant, &c., (*ut ante*, p. 648), TO HAVE AND TO HOLD all and singular the hereditaments and premises hereinbefore described, and hereby released or appointed, or otherwise assured, or intended so to be, unto the said [*purchaser*] and his heirs for ever, To

Parties.

Recitals.

Testatum.

Habendum.

To such uses as

8. WHERE SHARES HAVE BEEN SETTLED, MORTGAGED, &c.

purchaser may appoint; in default, to his use in fee.

SUCH USES, upon such trusts, in such shares and proportions, and with, under, and subject to such powers, provisoes, declarations, and agreements, as the said [*purchaser*] by any deed or deeds shall at any time or from time to time direct, limit, or appoint, and in default of or subject to any such direction, limitation, or appointment, To THE USE of the said [*purchaser*], his heirs and assigns, for ever, for his and their own absolute use and benefit, and to, for, and upon no other use, trust, intent, or purpose whatsoever. (*Covenants for title and against incumbrances, clause negativing mutual implied warranty, and covenants to produce title-deeds, ut ante*, p. 649). IN WITNESS &c.]

MEMORANDUM, *&c. of* ACKNOWLEDGMENT, (*ut ante*, Vol. 5, p. 610).

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9. OF HOUSE AND SHOPS HELD UNDER ONE LEASE.

9. [DEED *of* ASSIGNMENT, *in the Nature of a* PARTITION, *made between two late* PARTNERS, *of a Dwelling-house, Shop, and Warehouses, held under* ONE LEASE, APPORTIONMENT *of renewed* RENT, *with* CROSS POWERS *of* DISTRESS.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN [A. B.], of the one part; and [C. D.], of the other part. WHEREAS the said [A. B.] and [C. D.] have for some time past carried on the trade or business of a ——, in partnership, and have been interested in the capital joint-stock and profits of the said partnership in the proportions following; (that is to say), the said [A. B.] in two-thirds thereof, and the said [C. D.] in one-third thereof; AND WHEREAS (*recital of a building-lease of land to* [*lessee*] *for ninety-nine years, at the rent of* 14*l.* 18*s.*, *and an additional rent of* 50*l. in case certain trades were carried on in the buildings to be erected. Assignment of lease by* [*lessee*] *to* [A. B.] *and* [C. D.], *and completion by them of a dwelling-house and adjacent shop and warehouses in performance of covenants in lease*); AND WHEREAS the said lease was purchased by the said [A. B.] and [C. D.], and the said messuages or tenements, and other buildings, were so erected and completed by them as aforesaid, for the purposes of the said

Recital that [A. B.] and [C. D.] were partners;

—of purchase of leasehold by them;

—that leaseholds were purchased for partnership purposes;

partnership business, and with and out of the joint capital thereof; And whereas the said [C. D.] has recently retired from the said partnership trade or business, and the said partnership has been dissolved, and the accounts between the said [A. B.] and [C. D.] have been mutually settled, and partition and transfer, and satisfaction of their respective shares in the said partnership stock, capital, and effects, have been made and concluded, save and except so far as relates to seventeen bales of ——, marked with the letters F. D. inclosed within a square, and now lying in the second floor of the aforesaid warehouses at ——, and also except so far as relates to the messuages and other hereditaments assigned to the said [A. B.] and [C. D.] by the above-recited indenture of assignment of the —— day of ——; And whereas, upon the said dissolution of the said partnership, it was agreed between the parties hereto, that the messuage or dwelling-house, and other hereditaments, firstly hereinafter described, and hereby assigned, or intended so to be, should belong to, and be assigned to, the said [C. D.], his executors, administrators, and assigns, for the residue of the said term of ninety-nine years therein now to come and unexpired, but subject to the payment of the yearly rent of 7*l.* 9*s.*, being one moiety or half part of the said yearly rent or sum of 14*l.* 18*s.*, by the said indenture of lease reserved and made payable, and subject also to the covenants, conditions, and agreements in the same indenture of lease contained, so far only as the same relate to the messuage or tenement and other hereditaments firstly hereinafter described, as and for, and in satisfaction of, his share of and in the messuages or tenements, and other hereditaments, so assigned to them the said [A. B.] and [C. D.] aforesaid, and that the shop, warehouses, and other hereditaments, secondly hereinafter described, and hereby also assigned, or intended so to be, should belong and be assigned to the said [A. B.], for the residue of the said term of ninety-nine years therein, now to come and unexpired, but subject to the payment of the yearly rent of 7*l.* 9*s.*, being the other moiety or half part of the said yearly rent or sum of 14*l.* 18*s.* by the said indenture of lease reserved and made payable, and subject also to the covenants, conditions, and agreements in the same indenture of lease contained, so far only as the same relate to the messuage or tenement, and other hereditaments, secondly hereinafter described, as and for and in satisfaction of

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—of dissolution of partnership, and settlement of accounts, &c.

9. OF HOUSE AND SHOPS HELD UNDER ONE LEASE.

his share of and in the messuages or tenements, and other hereditaments, so assigned to them the said [A. B.] and [C. D.] as aforesaid; And, for the more exact and perfect adjustment and equality of division between the said [A. B.] and [C. D.], in proportion to their respective interests and shares in the said leasehold messuages or tenements, and other hereditaments, it has been agreed between the said [A. B.] and [C. D.], that the aforesaid seventeen bales of ——, part of the said partnership stock in trade, whereof no division has been made, shall be assigned and belong to the said [A. B.] solely and absolutely (*a*); AND WHEREAS the said seventeen bales of —— have been delivered to the said [A. B.] accordingly, as he does hereby acknowledge; AND WHEREAS, for the more effectually apportioning the said yearly rent or sum of 14*l.* 18*s.* between them the said [A. B.] and [C. D.], and their executors, administrators, and assigns, and for indemnifying each of them, and his executors, administrators, and assigns, and the hereditaments and premises intended to be hereby assigned to him, from the rents, covenants, and agreements reserved and contained in the above-recited indenture of lease, which ought to be paid, kept, done, and performed in respect of the premises intended to be hereby assigned to the other of them, it hath been mutually agreed between the said [A. B.] and [C. D.], that they shall respectively enter into such covenants, and agreements as are hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the above-recited agreement, and in consideration of the assignment hereinafter contained, and also in consideration of the said seventeen bales of —— having been so assigned and delivered to the said [A. B.] by the said [C. D.], as is hereinbefore recited, the said [A. B.] *Doth*, by these presents, bargain, sell, assign, and transfer, unto the said [C. D.]

Goods to be taken for equality of partition.

Agreement for apportionment of rent.

Testatum:

[A. B.] assigns to [C. D.] his share in the

Stamp.

(*a*) [If, upon the settlement of the partnership accounts, any money had passed from [C. D.] to [A. B.], and the present assignment of the larger share of the leasehold estate to [C. D.] were stated to be in consideration of a proportionably larger share of the partnership stock generally being made over to [A. B.], it would be necessary to state in the deed what proportion of the money so paid to [A. B.] formed the consideration, or part of the consideration, for this assignment, upon which sum so stated an *ad valorem* duty would be payable. The duty is avoided altogether by stating, as above, the assignment to be made in consideration of the transfer of specific goods.]

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his executors, administrators, and assigns, all those the undivided two-third parts or shares (the whole into three equal parts or shares being divided) of him the said [A. B.] of and in all that messuage or dwelling-house, (*describe parcels allotted to* [C. D.]), being part of the messuages or tenements, hereditaments and premises, comprised in and devised by the hereinbefore-recited indenture of lease of the —— day of ——, together with the rights, members, and appurtenances to the same premises belonging, and also of and in the said indenture of lease, and the benefit thereof; And all the estate, right, title, interest, term and terms of years, benefit, claim, and demand whatsoever of him the said [A. B.] in and to the said leasehold hereditaments and premises; TO HAVE AND TO HOLD the said two-third parts or shares, and all other the premises hereinbefore assigned, or intended so to be, unto the said [C. D.], his executors, administrators, and assigns, henceforth during all the residue and remainder now to come and unexpired of the term of ninety-nine years, so granted by the hereinbefore-recited indenture of lease as aforesaid, and for all other the estate, term, and interest, (if any) of the said [A. B.] in the said hereditaments and premises, subject nevertheless to the payment of the said apportioned yearly rent of 7*l.* 9*s.*, and also of the said increased rent of £50, in case the same shall become payable, and so far as the payment thereof shall be made necessary or be occasioned by the said [C. D.], his executors, administrators, under-tenants, or assigns, and to the observance and performance of all and singular the covenants, stipulations, and agreements inserted and contained in the above-recited indenture of lease, on the part of the said [C. D.], his executors, administrators, and assigns, to be observed and performed, so far as such covenants, stipulations, and agreements relate to or concern, or ought to be observed and performed in respect or on account of, the messuages, tenements, hereditaments, and premises hereinbefore devised and assigned, or intended so to be, unto the said [C. D.], his executors, administrators, and assigns. (*Add covenants for title by* [A. B.] *with* [C. D.], *as to the premises assigned by him*). AND THIS INDENTURE FURTHER WITNESSETH, that, in further pursuance of the above-recited agreement, and in consideration of the assignment hereinbefore contained, and also of 5*s.* of lawful British money already paid by the said [A. B.] to the said

dwelling-house, &c.,

and all the estate.

Habendum for residue of term;

subject to a moiety of the rent, and to covenants.

Second *testatum*: [C. D.] assigns to [A. B.] his share in the shop and warehouses.

9. OF HOUSE AND SHOPS HELD UNDER ONE LEASE.

[C. D.], the said [C. D.] *Doth*, by these presents, bargain, sell, assign, and transfer unto the said [A. B.], his executors, administrators, and assigns, all that undivided third part or share (the whole into three equal parts or shares being divided) of him the said [C. D.] of and in all that messuage, (*describe parcels allotted to* [A. B.]), being the remainder of the messuages or tenements, hereditaments, and premises, comprised in and devised by the hereinbefore-recited indenture of lease of the —— day of ——, together with the rights, members, and appurtenances to the same premises belonging, and also of and in the said indenture of lease, and the benefit thereof; and all the estate, right, title, interest, term and terms of years, benefit, claim, and demand whatsoever of him the said [C. D.] in and to the said leasehold hereditaments and premises; To HAVE AND TO HOLD the said one-third part or share, and all other the premises lastly hereinbefore assigned, or intended so to be, unto the said [A. B.], his executors, administrators, and assigns, henceforth during all the residue and remainder now to come and unexpired of the term of ninety-nine years, so granted by the hereinbefore-recited indenture of lease as aforesaid, and for all other the estate, term, and interest (if any) of the said [C. D.] in the said hereditaments and premises, subject nevertheless to the payment of the said apportioned yearly rent of 7*l.* 9*s.*, and also of the said increased rent of £50, in case the same shall become payable, and so far as the payment of the same shall be made necessary, or be occasioned, by the said [A. B.], his executors, administrators, under-tenants, or assigns, and to the observance and performance of all and singular the covenants, stipulations, and agreements inserted and contained in the above-recited indenture of lease, on the part of the said [A. B.], his executors, administrators, and assigns, to be observed and performed, so far as such covenants, stipulations, and agreements relate to or concern, or ought to be observed and performed in respect or on account of, the messuage, or tenements, lands, and premises, hereinbefore secondly described and assigned, or intended so to be, unto the said [A. B.], his executors, administrators, and assigns. (*Add covenants for title by* [C. D.] *with* [A. B.] *as to the premises secondly assigned*). And the said [C. D.], for himself, his heirs, executors, and administrators, *Doth* hereby further covenant, promise, grant, and agree, with and to the

Habendum for residue of term, subject to a moiety of the rent, &c.

Covenant by [C. D.] to pay a moiety of the rent.

9. OF HOUSE AND SHOPS HELD UNDER ONE LEASE.

said [A. B.], his executors, administrators, and assigns, that he the said [C. D.], his executors, administrators, and assigns, will and shall, from time to time and at all times hereafter, during the residue yet to come and unexpired of the term of ninety-nine years, so by the above-recited indenture of lease granted as aforesaid, well and truly pay, or cause to be paid, unto the said [A. B.], his executors, administrators, or assigns, or unto such person or persons as shall from time to time be entitled to receive the ground-rent or sum of 14*l.* 18*s.* so reserved by the above-recited indenture of lease, as aforesaid, the clear yearly rent or sum of 7*l.* 9*s.*, being one moiety or half part of the said ground-rent or sum of 14*l.* 18*s.*, when and as the same shall become due and payable, according to the true intent and meaning of the same indenture of lease; And will and shall well and truly pay, or cause to be paid, the said increased rent of £50, in case the same shall become payable, and so far as the same shall or may be occasioned by the said [C. D.], his executors, administrators, under-tenants, or assigns; *And* will and shall, during the continuance of the said term, perform, fulfil, and keep all and singular the covenants, stipulations, and agreements inserted and contained in the above-recited indenture of lease, on the part of the said [C. D.], his executors, administrators, and assigns, to be kept, done, and performed, so far as such covenants, stipulations, and agreements relate to or concern, or ought to be kept, done, and performed in respect or on account of the messuage or tenement and other hereditaments and premises secondly hereinbefore described and assigned, or intended to be assigned, to the said [C. D.], his executors, administrators, and assigns; and of and from a moiety or half part of the said yearly rent or sum of 14*l.* 18*s.*, and of and from the said increased rent, so far as the same shall be occasioned by the said [C. D.], his executors, administrators, under-tenants, or assigns, and of and from the said covenants, stipulations, and agreements, so far as they respectively relate to or concern, or ought to be kept and observed in respect or on account of, the said messuage or tenement, and premises hereby assigned, or intended to be assigned, to the said [C. D.], and of and from every neglect, breach, or default, which shall or may at any time or times hereafter happen in the payment or performance thereof respectively, will, and shall, from time to time and at all times for ever hereafter, effectually save, defend, keep

Covenant by [C. D.] to pay increased rent, if same shall become payable through his means;

and perform covenants as far as respects his part of the premises;

and to indemnify [A. B.] therefrom.

9. OF HOUSE AND SHOPS HELD UNDER ONE LEASE.

harmless and indemnified the said [A. B.], his executors, administrators, and assigns, and his and their lands and tenements, goods, and chattels; AND MOREOVER, that in case the said [A. B.], his executors, administrators, or assigns, shall at any time or times hereafter pay, bear, sustain, or be put unto any sum or sums of money, costs, charges, or expenses, for or on account or in respect of, the said yearly rent or sum of 7*l.* 9*s.*, or of the increased rent, covenants, and agreements hereinbefore covenanted and agreed to be paid, kept, done, and performed by the said [C. D.], his executors, administrators, and assigns, as aforesaid, or any of them, then and in every such case, and so often as the same shall happen, it shall be lawful for the said [A. B.], his executors, administrators, and assigns, into and upon the messuage, tenement, and premises firstly hereinbefore described, and hereby assigned, or intended to be assigned, to the said [C. D.], to enter and distrain for all and every such sum and sums of money, costs, charges, and expenses, which he the said [A. B.], his executors, administrators, or assigns, shall so pay, bear, sustain, expend, be at, or be put unto, and the distress and distresses then and there found to take, lead, drive, carry away, and impound, and in pound to detain and keep, until the same sum and sums of money, costs, charges, and expenses, and all costs, charges, and expenses, whatsoever, sustained or occasioned by or attending the making, taking, and keeping any such distress or distresses, shall be fully paid and satisfied; and in default of payment thereof, in due time after such distress or distresses shall be made and taken as aforesaid, to appraise, sell, and dispose of such distress or distresses, or any part thereof, or otherwise to act in regard thereto, according to the due course of law, in like manner as in case of distress for non-payment of rent reserved on common leases, to the intent that thereby and therewith the said [A. B.], his executors, administrators, and assigns, shall and may be fully paid and satisfied all and every such sums and sum of money, costs, charges, and expenses, as aforesaid.

Power to distrain on breach of covenants.

Further *testatum*.

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the above-recited agreement, and for and in consideration of the covenants hereinbefore contained on the part of the said [C. D.], his heirs, executors, and administrators, he, the said [A. B.], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, grant, and agree with and to the

said [C. D.], his executors, administrators, and assigns, in manner following, that is to say, (*the same covenants mutatis mutandis as before*). IN WITNESS &c.] 9. OF HOUSE AND SHOPS HELD UNDER ONE LEASE.

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10. [DEED *of* APPOINTMENT *of Uses in Severalty of* FREEHOLD ESTATES (*subject to a subsisting Life Estate*) *by a* REFEREE *to whom they had been conveyed by* THREE TENANTS IN COMMON, *in trust to make Partition, and appoint the Shares, when ascertained, to the Persons entitled to them.* ONE *of the* OWNERS *has since* DIED, *having* DEVISED *his undivided Share to* CERTAIN USES: ANOTHER OWNER *has* REFUSED TO ASSENT *to the Partition determined on by the Referrees.* 10. BY REFERREE WHERE ONE PART-OWNER REFUSES TO CONCUR.

THIS INDENTURE, made the —— day of ——, BETWEEN [*referree*], of &c., of the one part; and [A.] of the other part (*a*): WHEREAS (*b*), [*devisor*], late of ——, by his last will and testament, bearing date on or about the —— day of ——, gave and devised the messuage or tenement, lands and hereditaments hereinafter particularly described, and hereby appointed, or intended so to be, to the use of [*tenant for life*], and his assigns, during his life; and from and immediately after the decease of the said [*tenant for life*], to the use of the said [A.], [B.], late of ——, and [C.], of ——, and their heirs, equally to be divided between them as tenants in common: AND WHEREAS the said [*testator*] de- Parties. Recital of ownership in common, and conveyance to referree.

(*a*) [The uses upon which the deceased owner has devised his share, are supposed to be such as to render it inexpedient or impracticable to make the *cestuis qui use* parties for the purpose of taking a covenant from the referree, that he has not encumbered. The living and assenting joint-owner is made a party for this purpose only.]

(*b*) [The appointment by the referree is here supposed not to be made by indorsement on the deed of conveyance to him, for the purpose of explaining by a recital of that deed the nature and extent of the referree's authority. If the present deed is indorsed on the former, (which is the most advisable course), the recitals down to this point will be omitted, and the requisite alterations in the language will be made.]

10. BY REFERREE WHERE ONE PART-OWNER REFUSES TO CONCUR.

parted this life in or about the month of ——, without having revoked or altered his said will, and is buried at ——: AND WHEREAS the said will of the said [*testator*] was duly proved by the executors therein named in the Court of ——: AND WHEREAS, by an indenture of lease and release, bearing date respectively on or about the —— and —— days of ——, the release being made, or expressed to be made, between the said [A.] of the first part, the said [B.] of the second part, the said [C.] of the third part, and the said [*referree*], of the fourth part, the messuage or tenement, lands, and other hereditaments hereinafter described, and so by the above-recited will of the said [*testator*], deceased, devised to the said [A.], [B.], and [C.], as aforesaid, were released or otherwise assured unto the said [*referree*] and his heirs, to hold to him the said [*referree*] and his heirs, subject to such powers of appointment, to such uses, upon such trusts, and for such intents and purposes, as the said [*referree*], in the exercise and execution of the several trusts, powers, and authorities thereinafter expressed and contained, should, by any deed or deeds, to be attested by one witness or more, direct, limit, or appoint; and in default of, or subject to, any such direction, limitation, or appointment, to such and the same uses, and for such and the same trusts, intents, and purposes, as the said messuage or tenement, lands and hereditaments, were and stood limited and subject to immediately before the execution of the now reciting indenture: And in the now reciting indenture it was provided, declared, and agreed, that, immediately, or as soon as conveniently might be, after the execution thereof, it should be lawful for the said [*referree*] to enter into and upon the said messuages or tenements, lands and hereditaments, in order to take a view, admeasurement, and survey thereof, and to do and execute all such other matters and things as should be requisite and necessary for the ascertaining of the true and exact value of such messuages or tenements, lands and hereditaments, and, in the absolute discretion of the said [*referree*], to make a fair, just, and equal partition and division of the same into three allotments or portions, according to such ascertained value thereof; And when and as soon as the said [*referree*] should have divided and allotted the said messuages or tenements, lands and hereditaments, into three equal allotments or portions as aforesaid, then that it should be lawful for the said [*referree*], and he was thereby authorized and empowered

without any further consent or concurrence on the part of the said [A.], [B.], and [C.], respectively, or their respective heirs or assigns, and notwithstanding the expression or intimation of the dissent or non-concurrence of any one or two of them, to convey and assure one of the said allotments or portions, into which the said messuages or tenements, lands and hereditaments, should be divided as aforesaid, unto or for the benefit of the said [A.], his heirs or assigns, or in such manner as he or they should direct, and to convey and assure one other of the said allotments or portions unto or for the benefit of the said [B.], his heirs or assigns, in such manner as he or they should direct, and also to convey or assure the remaining allotment or portion of the said messuages or tenements, lands and hereditaments, unto, or for the benefit of, the said [C.], his heirs or assigns, or as he or they should direct, to the intent that the several allotments or portions into which the said messuages or tenements of land and hereditaments should be divided or allotted as aforesaid, should and might thenceforth, and at all times for ever thereafter, be held and enjoyed by the said [A.], [B.], and [C], respectively, and their respective heirs and assigns, in severalty, in lieu of, and in full satisfaction for, the respective undivided third parts or shares of them, the said [A.], [B.], and [C.], in the same closes, pieces, or parcels of land and hereditaments: and by the indenture of release now in recital it was further provided, declared, and agreed, by and between the said [A.], [B.], and [C.], that the partition and division, conveyance and assurance, to be made by the said [*referree*], as aforesaid, should be binding and conclusive on them, the said [A.], [B.], and [C.], respectively, and their respective heirs and assigns, and should not be impeached or impeachable by any of them, or the appointees, heirs, or assigns of any of them, for or on account of any cause, matter, or thing whatsoever; *And further*, that the partition and division to be made by the said [*referree*], as aforesaid, should not be in anywise avoided, defeated, or disturbed, in consequence of the eviction, by title paramount or otherwise, of any of the said parties thereto, or any persons or person claiming under any one of them respectively, from the hereditaments to be conveyed or assured to such party by the said [*referree*], nor should the title of any of the said parties, or of any person or persons claiming under him respectively, to the hereditaments to be conveyed

10. BY REFERREE WHERE ONE PART-OWNER REFUSES TO CONCUR.

Referree's partition and conveyance to be binding on the parties;

—title to one allotment not to depend upon title to the other.

10. BY REFERREE WHERE ONE PART-OWNER REFUSES TO CONCUR.

or assured to him respectively by the said [*referree*], as aforesaid, depend upon the title of the others or other of the said parties, or their or his heirs, to the hereditaments to be conveyed and assured to the others or other of the said parties by the said [*referree*], as aforesaid, any rule at law or in equity to the contrary in anywise notwithstanding.

Of will of [B.] devising his share to certain uses;

AND WHEREAS the said [B.], by his last will and testament, bearing date on or about the —— day of —— (*c*), gave and devised all his real estates, whatsoever and wheresoever, to and for the uses, trusts, intents, and purposes in the said will expressed and contained: AND WHEREAS the said [B.] departed this life on or about the —— day of ——, without having revoked or altered his said will.

Of survey and allotment by referree;

AND WHEREAS the said will of the said [B.], deceased, was proved, &c. AND WHEREAS, shortly after the date and execution of the above-recited indenture of release of the —— day of ——, the said [*referree*], in pursuance and execution of the power and authority in that behalf contained in the said indenture of release, proceeded to take an admeasurement and survey of the several messuages or tenements, lands and hereditaments, &c., to be divided and parted by him as aforesaid, in order to ascertain the true and exact value thereof, and to the best of his judgment, knowledge, and ability, did thereupon make a fair and just partition of the same into three equal lots or portions, according to the ascertained value thereof. And the said [*referree*], in further execution of the powers and authorities aforesaid, allotted and awarded all and singular and such parts of the said several messuages or tenements, lands and hereditaments, as are comprised and described in the first schedule hereunder written, unto the said [A.], in lieu and full satisfaction for his undivided third part of and in the said messuages or tenements, lands, and other hereditaments. And the said [*referree*] allotted and awarded all and singular and such parts of the said messuages or tenements, lands and hereditaments, as are comprised and described in the second schedule hereunder written, to stand and be to the uses, upon the trusts, and to and

(*c*) [Under the old law affecting wills of real estate, a devise of lands would have been revoked at law by such a conveyance to a referree, for the purpose of making partition, as is recited in the text, but not in equity. In cases coming under the operation of the recent stat. 1 & 2 Vict. c. 26, there would be no revocation even at law.]

for the intents and purposes, in and by the above-recited will of the said [B.], deceased, limited, declared, expressed, and contained of and concerning his undivided third part or share of and in the said messuages or tenements, lands and hereditaments, in lieu of, and in satisfaction for, such last-mentioned undivided third part or share. And the said [*referree*] awarded and allotted the residue of the said messuages or tenements, lands and hereditaments, (being the hereditaments comprised and described in the third schedule hereunder written), unto the said [C.], in lieu of, and in full satisfaction for, the undivided third part or share of the said [C.] of and in the said messuages or tenements, lands and hereditaments. AND WHEREAS the said [*referree*] having notified unto the said [C.] that he has made such admeasurement, survey, valuation, and partition and allotment, as aforesaid; the said [C.] expressed himself to be dissatisfied with the same, and refused to assent thereto, or to sanction or be a party to any conveyance or appointment to be made in pursuance and completion thereof. AND WHEREAS the said [C.] has assigned no sufficient reason for such dissent and refusal as aforesaid, and the said [*referree*], after reconsidering his said valuation, award, and allotment, being unable to discover any error, inequality, or injustice therein, has determined to carry the same into effect, and for that purpose, and in pursuance and exercise of the hereinbefore recited power to make such appointment as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance and execution of the trusts, powers, and authorities reposed in and given to the said [*referree*] by the hereinbefore-recited indenture of the —— day of ——, and of all other powers and authorities him hereunto enabling, for the purpose of effectuating and completing the partition, division, and allotment of the said hereditaments so made by him as aforesaid, he the said [*referree*] *Doth* by this present deed, attested by the credible witness whose name is hereunder written, direct, limit, and appoint that all and singular the said messuages or tenements, closes, pieces, or parcels of land, and hereditaments comprised in and released or otherwise assured by the above-recited indenture of release of the —— day of ——, and which are comprised or described in the first, second, and third schedules hereunder written, shall henceforth be, remain, and continue to the uses, upon the

10. BY REFERREE WHERE ONE PART-OWNER REFUSES TO CONCUR.

—that [C.] dissents from referree's award and allotment.

Testatum: Referree appoints—

lands comprised in first schedule

10. BY REFERREE WHERE ONE PART-OWNER REFUSES TO CONCUR.

trusts, and to and for the intents and purposes following; that is to say, as to, for, or concerning all such, so many, and such parts of the said messuages or tenements, closes, pieces or parcels of land, as are comprised or described in the first schedule hereunder written, To SUCH USES, upon such trusts, to and for such ends, intents, and purposes, and subject to such powers, provisoes, and declarations, as the undivided third part or share of the said [A.] of and in the said messuages or tenements, lands and hereditaments, was and stood limited and subject to, immediately before the execution of the hereinbefore-recited indenture of release of the —— day of ——, or such of them as are now subsisting or capable of taking effect; and to, upon, or for no other use, intent, or purpose whatsoever; and as to, for, and concerning all such, and so many, and such parts of the said messuages or tenements, lands and hereditaments, as are comprised or described in the second schedule hereunder written, To SUCH USES, &c., (*as the share of B. stood limited to. Similar declaration of use in respect of the hereditaments comprised in the third schedule. Covenant by [referree] with* [A.], *that he has not incumbered any of the hereditaments conveyed to him*). IN WITNESS &c.

to the uses to which share of [A.] stood limited.

As to lands in second and third schedules.

FIRST SCHEDULE TO WHICH THE PRECEDING INDENTURE REFERS.

SECOND SCHEDULE TO WHICH THE PRECEDING INDENTURE REFERS.

THIRD SCHEDULE TO WHICH THE PRECEDING INDENTURE REFERS.]

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END OF THE SIXTH VOLUME.

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